TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 170.

MANUEL S. DE CAMBRA, PLAINTIFF IN ERROR,

vs.

HANNAH ROGERS AND FRANK J. ROGERS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED OCTOBER 8, 1906.

(16,775.)

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INDEX.

	Original.	Print.
Writ of error	1	1
Assignment of errors	2a	2
Caption	4	3
Transcript from superior court	5	3
Complaint	5	3
Answer	6½	4
Cross-complaint	7	5
Exhibit A—Declaration and statement of pre-emption of Manuel S. De Cambra, December 29, 1893	17½	13
B—Declaratory statement of Hannah Rogers, September 3, 1883	18½	14
Demurrer to cross-bill	19	14
Order sustaining demurrer	19½	15
Findings of fact	20	15
Conclusions of law	21½	16
Judgment	22	17
Clerk's certificate to judgment-roll	23	17
Bill of exceptions	23½	18
Statement	23½	18
Testimony of Hannah Rogers	24	18
Plaintiffs' Exhibit A—Patent to Enos J. Rogers	24½	19
Admissions	26	20
Specification of errors of law	26½	20
Judge's certificate to bill of exceptions	28	22

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	Original.	Print
Notice of appeal	28	22
Attorney's certificate, &c., to transcript	29	22
Acceptance of service of copy of transcript	30	23
Opinion in department one	31	23
Petition for hearing by court in bank	34	26
Cross-complaint	35½	27
Diagram	36	27
Exhibit A—Declaratory statement of De Cambra	45½	35
B—Declaratory statement of Hannah Rogers	46	35
Demurrer to cross-complaint	47	36
Order sustaining demurrer	47	36
Order vacating judgment of department and setting cause for hearing before court in bank	56	42
Opinion of court in bank	57	43
Judgment	61	47
Petition for writ of error	62	47
Order allowing writ of error	67	50
Bond on writ of error	69	51
Citation	72	52
Admission of service of citation	72½	52
Affidavit of service of citation	73	53
Clerk's certificate	74	53

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the State of California, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said supreme court, before you between Manuel S. De Cambra, (defendant) plaintiff in error, and Hannah Rogers and Frank J. Rogers (plaintiffs) defendants in error, a manifest error hath happened, to the great damage of the said Manuel S. De Cambra, plaintiff in error, as by his complaint appears, and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington in the District of Columbia, on the 26th of July next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be- inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States, this 29th day of May in the year of our Lord one thousand nine hundred and one and of the Independence of the United States the one hundred and twenty-fifth.

Seal U. S. Circuit Court, Northern Dist. Cal.

SOUTHARD HOFFMAN,
Clerk U. S. Circuit Court, Northern District of California,
By W. B. BEAIZLEY, *Deputy Clerk.*

The above writ of error is hereby allowed.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

2 [Endorsed:] Original. S. F. 1271. United States Supreme Court. Manuel S. De Cambra pl'ff in error *vs.* Hannah Rogers, *et al.* def'ts in error. Writ of error. Filed May 29 1901 Geo. W. Root, clerk. By A. E. Hornlein, deputy.

2a In the Supreme Court of the United States.

MANUEL S. DE CAMBRA, Plaintiff in Error,
v.
HANNAH ROGERS and FRANK J. ROGERS, Defendants in Error.

In the Supreme Court of the State of California.

No. 1271.

Assignment of Errors.

Because in the final judgment of the supreme court of the State of California, which is the highest court of the State, rendered on the 30th day of April, A. D., 1901, in which the decision was had, there was drawn in question a right, title, privilege and immunity claimed by the plaintiff in error under a statute of the United States, and specially set up by the plaintiff in error in his cross-complaint in said cause, to wit: under the provisions of chap. 4 of title 13 of the Revised Statutes of the United States, and the said decision is against the right, title, privilege and immunity so set up and claimed afterward, to wit: on the first Monday of October in this same term, before the justices of the Supreme Court of the United States, in the city of Washington, in the District of Columbia, comes Manuel S. De Cambra, the plaintiff in error, by B. B. Newman and R. M. F. Soto, his attorneys and of counsel herein, and says:

2b That in the record and proceedings, as aforesaid, there is manifest error, to wit: That the declaration aforesaid of the defendants in error and the matters therein contained are not sufficient in law for the said Hannah Rogers and Frank J. Rogers, defendants in error, to have or maintain their action aforesaid against the said Manuel S. De Cambra, the plaintiff in error; that there is also error in this, to wit:

That by the record aforesaid, it appears that the judgment aforesaid given and made in said case was for said Hannah Rogers and said Frank J. Rogers, the defendants in error, and against said Manuel S. De Cambra, the plaintiff in error, whereas, by the laws of the United States, and particularly by the provisions of chap. 4 of title 13 of the Revised Statutes of the United States, and by the rules and principals of equity, the said judgment ought to have been given for the said Manuel S. De Cambra against the said Hannah Rogers and the said Frank J. Rogers.

And from the record in said case it appears that the court erred in sustaining the demurrer of the said defendants in error to the cross-complaint of the plaintiff in error.

It further appears from said record that the court erred in holding or deciding that the cross-complaint of the plaintiff herein did not state facts sufficient to constitute a cause of action.

It further appears from the record in this cause that the court erred in not holding and deciding that the cross-complaint of the

plaintiff in error herein was sufficient in law and *in title* to the
2c relief therein demanded, and the said Manuel S. De Cambra, plaintiff in error herein, prays that the judgment aforesaid may be reversed, annulled and held for naught, and that he may be restored to all things which he has lost by reason of the judgment aforesaid.

Dated May 29th, 1901.

B. B. NEWMAN &
R. M. F. SOTO,
Attorneys and of Counsel for Plaintiff in Error, Manuel S. De Cambra.

3 [Endorsed :] Original. No. —. In the Supreme Court of the United States. Manuel S. De Cambra, plaintiff in error, *v.* Hannah Rogers and Frank J. Rogers, defendants in error Supreme court, State of California No. 1271 Assignment of errors B. B. Newman & R. M. F. Soto attorneys & of counsel for plaintiff in error.

4 In the Supreme Court of the State of California.

HANNA ROGERS and FRANK J. ROGERS, Plaintiffs and Respondents,
vs.
MANUEL S. DE CAMBRA ET AL., Defendants and Appellants. } S. F. D., No. 1271.

Transcript on Appeal from a Final Judgment.

B. B. Newman, attorney for defendants and appellants.
J. E. McElroy and C. C. Hamilton, attorneys for plaintiffs and respondents.

Filed this 11th day of January, A. D. 1898.

T. H. WARD, *Clerk*,
By A. W. JOHNSON,
Deputy Clerk.

5 In the Suprene Court of the State of California.

In the Superior Court of the County of Alameda, State of California.

HANNAH ROGERS and FRANK J. ROGERS, Plaintiffs,
vs.
MANUEL S. DA CAMBRA, JANE DOE DA CAMBRA and JOSE C. Fontes, Richard Roe, and John Blue, Defendants.

Complaint.

Plaintiffs above named complain of defendants above named, and for cause of action allege:

5½ I.

That Manuel S. Da Cambra and Jane Doe Da Cambra are now and for a long time past have been husband and wife.

II.

That on the 28th day of April, 1897, the said plaintiffs, Hannah Rogers and Frank J. Rogers, were the owners and seized in fee and entitled to the possession of all that certain piece or parcel of land and premises situated in the county of Alameda, State of California, and more particularly described as follows, to wit:

Lots numbered 3 and 4 and the east half of the southwest quarter of section thirty-one, in township one, south of range two, west of Mount Diablo meridian, in California, containing about 176 acres and $\frac{60}{100}$ of an acre.

III.

That said defendants entered upon and are now in the wrongful and unlawful possession of the said lands and premises, and wrongfully and unlawfully and against the will of said plaintiffs, withhold and detain the possession of said land and premises from said plaintiffs above named.

6 IV.

That the names, Jane Doe Da Cambra, Richard Roe and John Blue, are fictitious and are used to designate defendants whose true names are unknown to plaintiff-, and which when discovered by plaintiffs, will, by leave of the court, be inserted in this complaint with apt and proper words to charge the same.

Wherefore, the plaintiffs pray judgment against the said defendants for the restitution of said land and premises, and for costs of suit.

J. E. McELROY,
Attorney for Plaintiff-.

(Duly verified, and filed April 28th, 1897, and summons on that day duly issued and were served, together with a copy of the complaint in said action upon the appellants, and they duly appeared and filing and served their answers and cross-complaint therein.)

6½ In the Superior Court of the County of Alameda, State of California, Department No. 1.

HANNAH ROGERS and FRANK J. ROGERS, Plaintiffs,
vs.
MANUEL S. DE CAMBRA and FRANCISCA DE CAMBRA *et al.*, Defendants. } No. 13821.

I.

Now come Manuel S. De Cambra and Francisca De Cambra (the latter impleaded herein as Jane Doe De Cambra), two of the defendants in this action, and answering for themselves jointly, but separately from all the other defendants in this action, deny that on the 28th day of April, A. D. 1897, or at any other time whatever the said plaintiffs, or either or any of them, were the owners, or seized in fee, or entitled to the possession of all or of any part of land, real property or premises described in the complaint in this action.

II.

7 Deny that these defendants entered upon, or are now in the wrongful or unlawful possession of the said land or premises, or wrongfully or unlawfully, or against the will of the plaintiffs or otherwise, withhold or detain the possession of said land or premises from said plaintiffs, or otherwise, as alleged in said complaint, or otherwise.

Wherefore the said defendants herein appearing pray to be hence dismissed with their costs.

And for a cross-complaint in equity, Manuel S. De Cambra, one of the defendants in the above-entitled action, as plaintiff in this cross-complaint, complains against Hannah Rogers and Frank J. Rogers, the plaintiffs in the above-entitled action, as defendants in this cross-complaint, and for cause of action alleges:

That in the year 1867, Manuel S. De Cambra, the plaintiff in this cross-complaint, bought for a large sum of money from one Hewett Steele the premises described in the complaint in this action, to wit: lots numbered three and four, and the east half of the southwest quarter of section thirty-one in township one south of range two west of Mount Diablo meridian, with other adjoining lands, not exceeding four hundred and fifty acres, all of which was then enclosed with fences, and well known exterior boundaries, and then

7½ and there entered into the actual, quiet, peaceable, open, notorious, exclusive and adverse possession of all of the said land included within the said exterior boundaries thereof, and has ever since continuously resided thereon, and particularly and specially upon that part thereof described in the complaint in the above-entitled action. That for several years next after said purchase the plaintiff in this cross-complaint, Manuel S. De Cambra, cultivated, used, improved, and occupied for farming purposes all of said land with said exterior boundaries, after he had taken said possession under said purchase, as aforesaid, to wit: from the said year 1867, down to the year 1871. That in the year 1871 Ignatio Farpelha the husband of the plaintiff in the foregoing complaint, Hanna Rogers, and the father of Frank J. Rogers, bought an undivided one-half interest in said tract of four hundred and fifty acres from the plaintiff in this cross-complaint. That said land was then claimed as a private Mexican grant, to wit: "Laguna de Los Palos Colorados," and then actually was within the duly made and confirmed exterior boundaries of said private grant, and so continued to be a part and parcel of said private grant, until the 10th day of August, 1878, when by the final official survey

8 of said grant by the United States, it was ascertained that more than three leagues of land existed within the exterior boundaries of said private grant, and thereupon on the, to wit: the 10th day of August, 1878, restored to the United States as a part and parcel of its public lands, and became then on, to wit: August 10, 1878, for the first time a part of the public domain of the United States of America.

That it was mutually agreed by and between the said Ignatio

Farpelha, alias Enos J. Rogers, the husband of Hannah, and father of Frank J. Rogers, as aforesaid, and the plaintiff in this cross-complaint, Manuel S. De Cambra, at the time that the plaintiff in this cross-complaint sold an undivided one-half interest in said four hundred and fifty acre tract to said Ignatio Farpelha, alias Rogers, as aforesaid, that in the event that the said tract of four hundred and fifty acres should be excluded by the final official survey of the said grant, "Laguna de Los Colorados," and become public land of the United States, then, and in that event, the said Ignatio Farpelha, alias Rogers, should and would take the northwest quarter of said section 31, in said township and range as aforesaid, as his pre-emption right and claim, and that the southwest quarter of said
8½ section 31, in township and range aforesaid, should be the pre-emption claim of the plaintiff in this cross-complaint, Manuel S. De Cambra.

That afterwards and on the 30th day of July, 1878, the United States Government official survey of said township one, south of range two, west of the Mount Diablo meridian, was filed for record in proper United States land office, to wit: in the United States land office at San Francisco, California.

That afterwards, and on, to wit: the — day of ——, 1878, the said Ignatio Farpelha, alias Rogers, and the plaintiff in this cross-complaint, to wit: Manuel S. De Cambra, went to the said United States land office, and then and there, as the plaintiff in this cross-complaint supposed and believed, tendered to the register and receiver to file as a record in said land office, their respective pre-emption notices of their claims, and that the same were filed on said day with the register and receiver of said land office for their several and respective quarter sections, so respectively claimed by them as aforesaid, to wit: the said Ignatio Farpelha, alias Rogers, for the northwest quarter, and the said plaintiff in this cross-complaint, Manuel S. De Combra, for the southwest quarter of said section 31, in said
9 township and range aforesaid. That the plaintiff in this cross-complaint, to wit: Manuel S. De Cambra, could not at that time, nor at any other time, read or write at all, nor could he at that time, or at any other time, but very imperfectly, understand the English language. That said Manuel S. De Cambra is a native of Portugal, but has been for more than thirty-seven years a resident of the United States, and a citizen of the United States for more than twenty years, and the head of a family. That the said Ignatio Farpelha, alias Rogers, was in his lifetime the brother-in-law of the said Manuel S. De Cambra, to wit: that Manuel S. De Cambra's wife is the sister of said Ignatio Farpelha, alias Rogers. That the said Ignatio Farpelha, alias Rogers, was also a native of Portugal, but came to the United States of America when he was quite young. That he learned to read and write the English language fluently long prior to the time that he went with the plaintiff in this cross-complaint to the said United States land office, as aforesaid, to file for record therein their respective pre-emption not-ces of their claims, as aforesaid. That the plaintiff in this cross-complaint requested the said Ignatio Farpelha to prepare his, the said Manuel S. De Cambra's pre-emp-

tion claim for, and to include therein, the said southwest quar-
9½ ter of section 31 in said township and range aforesaid, accord-
ing to its legal subdivisions, as appeared upon the face of said township plat. That the said Ignatio Farpelha, alias Rogers, instead of doing as thus directed and requested by the plaintiff in this cross-complaint, intentionally, willfully, knowingly, corruptly and fraudulently inserted in the said Manuel S. De Cambra's notice and claim of pre-emption, to which he, to wit: Manuel S. De Cambra, put his cross or mark, (being wholly unable to read its contents) the northeast quarter of said section 31 in township and range aforesaid, upon which he, the said Manuel S. De Cambra, had not then, and never had, any dwelling-house or other improvements whatever, and only a small part of which was then in the possession of said Manuel S. De Cambra, and three-fourths of which was utterly worthless, and tendered said pre-emption notice and claim in the name of Manuel S. De Cambra in said land office as a record therein.

That the said Ignatio Farpelha, alias Rogers, then and at that time in said United States land office prepared and signed his name, intentionally, knowingly, willfully, and fraudulently to his pre-emption notice, wherein he claimed the said lots numbered three and four, and the east half of the southwest quarter of section 31,
10 in township and range aforesaid, and then and there tendered the same to said register and receiver, together with their lawful fees for filing the same in the said land office as a record thereof.

That the plaintiff in this cross-complaint, Manuel S. De Cambra, did not discover the said fraud that the said Ignatio Farpelha, alias Rogers, had perpetrated upon him for several years thereafter, and not until the 29th day of December, 1883.

That afterwards, and on the, to wit, 29th day of December, 1883, the said plaintiff in this cross-complaint, Manuel S. De Cambra, having retained and employed an attorney-at-law, prepared for him a proper and true pre-emption notice and claim for the said lots three and four, and east half of southwest quarter of section 31, in township and range aforesaid, and then and there, on the said 29th day of December, 1883, tendered the same with their proper fees and commissions to the register and receiver of said land office, who then and there received and filed the same as a record in said land office, a copy of which, with the endorsements thereon, is hereto annexed, marked "Exhibit A," and made a part hereof.

II.

10½ That Hannah Rogers, one of the plaintiffs in the foregoing complaint, and one of the defendants in this cross-complaint, on the 24th day of January, 1884, filed in said United States land office a notice of pre-emption claim for and on behalf of the alleged heirs of said Ignatio Farpelha, alias Enos J. Rogers, for the same land that the said Manuel S. De Cambra had so filed his claim for on the said 29th day of December, 1883, as aforesaid, and therein alleged that the said (Ignatio Farpelha, alias) Enos J. Rogers had settled upon the said tracts and lots of land, a copy of which is hereto annexed, marked "Exhibit B," and made a part hereof.

That afterwards, on the 14th day of April, A. D., 1884, and on other days thereafter, the plaintiff in this cross-complaint, Manuel S. De Cambra, appeared before the said register and receiver in said land office with his witnesses, and proved by two and more competent witnesses and other competent and legal evidence, that he was, in the year 1869, a citizen of the United States, and that when he filed his said pre-emption notice of his claim in said land office on the 29th of December, 1883, he was the head of a family and a citizen of the United States, and that he had then and at all times since the year 1867, a dwelling-house upon said land so
11 claimed by him, and used, occupied and claimed the same at all times since his settlement thereon in 1867 as his pre-emption right, and that he did not leave land of his own to settle upon said land so claimed by him as his pre-emption right, and that he was not at the time he settled upon said land so claimed by him as his pre-emption in 1867, nor at any time since then and never was the owner of three hundred and twenty acres of land in any State or Territory of the United States, and that he never had any other right of pre-emption to any other land (except to the said lots three and four and the east half of the said southwest *p*uarter of said section 31, in said township and range aforesaid) in any other State or Territory of the United States. And that said land so claimed by him as his pre-emption right was not at any time mineral land, or within any reservation made by the United States, or otherwise, and that he, the said Manuel S. De Cambra, had made no agreem-nt or contract with any person or persons whomsoever by which the title he may acquire from the Government of the United States for said land so claimed by him as his pre-emption right, should inure in whole or in part to the benefit of any other person or persons except himself; and then and there tendered competent evi-
11½ dence to said register and receiver to prove, and did prove every matter and thing required of him by the pre-emption laws, so called, of the United States, to entitle him to enter said lots and tracts so claimed by him as his pre-emption right, and to entitle him to obtain letters patent of the United States therefor; and then was and ever since has been, and still is, and always shall continue to be, ready and willing to pay to the United States the proper purchase price of said lots and tracts of land so claimed by him as his pre-emption right and pre-emption claim, as aforesaid, with the proper fees and commissions of said land officers in and about the same, as provided by the laws of the United States and the rules and regulations promulgated by the Secretary of the Interior.

That Hannah Rogers presented some evidence to said register and receiver on the said 14th day of April, 1884, and at other times, in support of the said claim of the alleged heirs of Ignatio Farpelha, alias Rogers.

That on the 4th day of December, 1884, the said register and receiver rendered their decision therein, and denied the claims and rights of the said Manuel S. De Cambra, and the said claim
12 of Hannah Rogers set up by her for said heirs, and awarded all of said lots and tracts of land to the Central Pacific Railroad Company of California.

That from said decision of the register and receiver the said Manuel S. De Cambra, by his attorney, appealed to the Commissioner of the General Land Office at Washington, in the District of Columbia. That the said Hannah Rogers also appealed, by her attorney, to said Commissioner from the said decision.

That upon said appeals the Commissioner of the General Land Office reversed the said decision appealed from, and therein ordered the register and receiver to take further evidence therein on behalf of said appellants.

That upon such further evidence being heard, the register and receiver, on the 17th day of November, 1890, reversed their former decision, and wrongfully, by the misconstruction of the evidence submitted to them and the misapplication of the law to the evidence, and in violation of the just and equitable rights and claims of Manuel S. De Cambra, the plaintiff in this cross-complaint, rendered their opinion therein awarding all of said lots three and four, and the east half of the southwest quarter of said section 31, to the heirs of (Ignatio Farpelha, alias) Enos J. Rogers.

12½ That from the said decision of the register and receiver, Manuel S. De Cambra, by his attorney, appealed to the said Commissioner of the General Land Office. That upon said appeal the said Commissioner of the General Land Office, on the 19th day of August, 1892, reversed the said decision of the register and receiver, and awarded to one Fontes lot four of said tract, and ordered that a joint entry be made of lot three and the east half of the southwest quarter of said section 31 in the names of Hannah Rogers, on behalf of the alleged heirs of Enos J. Rogers, and Manuel S. De Cambra, the plaintiff in this cross-complaint.

That, from said decision, Manuel S. De Cambra appealed in due time to the Commissioner of the United States General Land Office at Washington. That, on the 19th day of August, 1892, the said Commissioner rendered his decision and judgment upon said appeal, wherein he awarded to the plaintiff in this cross-complaint, Manuel S. De Cambra, one-half part of all the land and premises described in the complaint and in the cross-complaint in this action, except lot 4 thereof, which he awarded to one Fontes.

That the plaintiff in this cross-complaint, in due time, as allowed by the settled and fixed, printed and published rules of the

13 Department of the Interior of the United States, to wit: within sixty days after receiving notice of the said decision and judgment of the said Commissioner of the General Land Office, appealed to the Secretary of the Interior of the United States from that part of the said decision of the Commissioner of the General Land Office which he by misconstruction of the evidence and the misapplication and misinterpretation of the law applicable to the evidence, wrongfully refused to award to the said Manuel S. De Cambra, the plaintiff in this cross-complaint the remaining undivided one-half of said lot three, and the east half of the southwest quarter of said section 31, and the whole of lot 4 thereof, in township and range aforesaid, which the said Commissioner of the General Land Office, by misconstruction of the law applicable to the evidence submitted to said reg-

ister and receiver and to said Commissioner by Manuel S. De Cam
bra, wrongfully and in violation of the lawful and just claims and rights of the said Manuel S. De Cambra under the laws of the United States, and particularly under the provisions of chapter 4, of title XXXII of the Revised Statutes of the United States, then in full force, effect, and virtue, wrongfully and against the laws of the United States awarded the same to the alleged (so-called) heirs
13½ of Ignatio Farpelha, alias Rogers, the plaintiffs in the foregoing complaint, and the defendants in this cross-complaint.

That the said Hannah Rogers and Frank J. Rogers, the defendants in this cross-complaint, and their attorney, J. W. Shanklin, Esq., *were duly notified*, and had due and full notice of the said decision of the Commissioner of the General Land Office so awarding to said Manuel S. De Cambra the said undivided one-half of the said lot 3, and the east half of the said southwest quarter of section 31, in said township and range.

That neither the said Hannah Rogers, Frank J. Rogers, nor their said attorney, or any other person on their behalf, took any appeal to the said Secretary of the Interior from the said decision of the Commissioner of the General Land Office within the time allowed by the laws of the United States and the said rules of the Department of the Interior, within sixty days after the service of said notice of the decision of the Commissioner upon them, and of their full knowledge thereof; but that they, the said Hannah Rogers and Frank J. Rogers, long after the time allowed them by the laws of the United States and the rules of the Department of the Interior, took an appeal from the said decision and judgment of the Commis-
14 sioner, to the Secretary of the Interior, from that part of the decision of the sa-d Commissioner which awarded to the said plaintiff in this cross-complaint the said undivided one-half of lot 3, and the east half of the southwest quarter of said section 31, in said township and range aforesaid.

That, upon the said appeal so wrongfully taken by and on behalf of Hannah Rogers and Frank J. Rogers to the Secretary of the Interior, a decision was thereafter, and on, to wit: the 9th day of October, 1894, rendered therein, purporting to be the decision of the Secretary of the Interior therein, but which the plaintiff in this cross-complaint, upon and according to his information and belief, and upon information and belief, charges and alleges the truth and the fact to be (without any intention whatever to offer or to mean any sort of disrespect to the said Secretary of the Interior, Honorable Hoke Smith), that he never read a word of the evidence submitted to him, said Secretary, on said appeal, by the plaintiff in this cross-complaint, nor upon the said appeal of said Hannah Rogers and Frank J. Rogers, but that subordinates, to wit: clerks employed by the Government of the United States in the said Department
14½ of the Interior, constructed on the said 9th day of October, 1894, on said two appeals, the said decision therein, and procured the said Secretary, Honorable Hoke Smith, merely to put and sign his name to it, which he did without reading, studying, weighing or considering any of the said evidence so taken before the said

register and receiver, and submitted to them by the said Manuel S. De Cambra and the said Hannah Rogers, as aforesaid, all of which was transmitted to him, the said Secretary, for consideration, by the said register and receiver and Commissioner of the General Land Office, as, by the laws of the United States and rules of said Interior Department, they were bound to do. And the plaintiff in this cross-complaint, Manuel S. De Cambra, alleges and charges the truth and the fact to be, upon and according to his information and belief, that as many as twenty Secretaries of the Interior could not have executed the judicial labor alone devolving upon the single Secretary of the Interior for the last thirty years, and because and for that reason the Secretary of the Interior cannot, for want of time and want of opportunity, read or hear read the evidence in five contested cases in every one hundred cases brought before him on appeal, or otherwise, nor write the decisions to which he is compelled to put his signature thereto in the dispatch of the official business of the Department of
15 the Interior of the United States; that the wrong and fault lies in the laws of the United States in imposing upon the Secretary of the Interior more official, mental, and physical labor than any twenty learned and educated men can or could have performed at any time during the last thirty years, and that, as a result and consequence of said immense official labor and duties so imposed upon the Secretary of the Interior, they have not been able to give their personal attention to the examination of the records, evidence, documents, papers, and arguments thereon presented to them by litigants claiming lands under the pre-emption, homestead, and many other land laws of the United States, nor to write or construct decisions thereon, but were compelled to permit subordinates, to wit: ordinary clerks in the said Department of the Interior, to examine and consider such evidence according to their own conception thereof, and to formulate and construct a decision thereon, and then submit the same to the honorable Secretary of the Interior, to merely sign his name to such decisions.

That such was the course pursued in the said appeal of the plaintiff in this cross-complaint, and of Hannah Rogers, the defendant herein.

And the said Manuel S. De Cambra hereby alleges and
15½ charges the truth and the fact to be that the said Honorable Hoke Smith, the then Secretary of the Interior, and who purports to have rendered a decision on said appeals on the 9th day of October, 1894, awarding all of said lots and tracts of land to the said alleged heirs of Enos J. Rogers, never, at any time whatever, examined, construed, or considered any part of the evidence submitted to him on said appeals, nor constructed any decision whatever therein, and especially and particularly the said decision therein signed by him on the 9th day of October, 1894, as aforesaid.

That, upon the said so-called and pretended decision of the Honorable Hoke Smith, the then Secretary of the Interior, letters patent of the United States, wrongfully and in violation of the laws of the United States, and the vested rights of the plaintiff in this cross-complaint,

Manuel S. De Cambra, were issued under the seal of the General Land Office on or about the 2d day of June, A. D. 1896, and delivered to Hannah Rogers, for and on behalf of herself and Frank J. Rogers, the plaintiffs in the foregoing complaint and the defendants in this cross-complaint, as the alleged heirs of Enos J. Rogers.

The plaintiff in this cross-complaint in equity, Manuel S.
16 De Cambra, charges and alleges that, by reason of the failure of the Honorable Hoke Smith, the Secretary of the Interior, to personally examine and consider the said evidence submitted to him on the said appeal by Manuel S. De Cambra, as aforesaid, nor to render any personal decision, judgment, or decree thereon on said appeal, or otherwise, the said Manuel S. De Cambra, the plaintiff in this cross-complaint, has been and is deprived of his right, title, interest, and property in and to said lands, tracts, and parcels of land designated and known as lots 3 and 4, and the east half of the southwest quarter of section 31, in township one south of range two, west of the Mount Diablo base and meridian, containing 176.60 acres of land, all of the value of $2,500 in the lawful money of the United States, without due process of law, and contrarry to and in violation of the laws of the United States, and especially and particularly against and contrary to the fourteenth amendment to the Constitution of the United States. And the said plaintiff in this cross-complaint specially pleads and sets up herein the laws of the United States as guaranteeing to him protection and safety in the prosecution and assertion of his said p-e-emption claim and right under the pre-emption laws of the United States continuously from the
16½ time he filed and caused to be recorded in the United States land office at San Francisco, California, on the 29th day of December, 1883, his notice of intention to claim said lots and tracts of land as his pre-emption right under the said laws of the United States, down to the present time. And further and especially pleads, asserts, and contends that his, the said Manuel S. De Cambra's right and title to said tracts and lots of land has been taken away from him, the said Manuel S. De Cambra, by the wrongful acts of said land officers, as aforesaid, and wrongfully and unlawfully given over, by letters patent of the United States, to Hannah Rogers and Frank J. Rogers, the pretended heirs of Enos J. Rogers, in violation of and contrary to the spirit, intent, and meaning of the XIV amendment of the Constitution of the United States of America, under which he, the said Manuel S. De Cambra, claims the protection of his rights and claims in and to said tracts of land aforesaid.

That the plaintiff in this cross-complaint hereby tenders and offers to pay into court the sum of $202.75, to and for the use of Hannah Rogers, as being the sum she paid to the register and receiver for said tracts and lots of land on the 17th day of July, 1895, together with such other proper costs and charges as she may have
17 lawfully paid to said land officers for their fees or commissions therein.

Wherefore, the plaintiff in this cross-complaint prays:

First. For the order, judgment, and decree of this honorable court, decreeing that the said defendant- in this cross-complaint, Hannah

Rogers and Frank J. Rogers, as the alleged heirs of Enos J. Rogers, hold the legal title to the premises hereinbefore described, under letters patent of the United States, as trustees for this plaintiff. That, by said order, judgment, and decree, said letters patent be canceled and annulled, as having been improvidently issued by the land officers of the United States, and against the laws of the United States, and against the XIV amendment of the Constitution of the United States of America.

Second. That the plaintiff, in his cross-complaint may, by said order, judgment, and decree, be forever quieted in his claim, right, title, and possession in and to said lots, tracts, and parcels of land.

And finally, the said plaintiff in this cross-complaint, Manuel S. De Cambra, prays for such other and further, or other and further relief in the premises as to this honorable court may seem meet,
17½ and as to equity appertains and belongs, and he will, as in duty bound, ever pray.

Dated May 25, A. D. 1897.

B. B. NEWMAN,

Attorney for Manuel S. De Cambra and Francisco De Cambra, Two of the Defendants in the Above-entitled Action at Law, and Attorney for Manuel S. De Cambra, Plaintiff in the Foregoing Cross-complaint in Equity.

No. 604 Merchant street, San Francisco.

"EXHIBIT A."

Declaration and Statement of Pre-emption for Land Not Subject to Private Entry.

Manuel S. De Cambra, of the county of Alameda, and State of California, being the head of a family and a citizen of the United States, did, on or about the 27th day of October, 1867, settle upon and improve, and has ever since claimed, occupied, and improved the lots 3 and 4, and E. ½ of S. W. quarter of section 31, in township one south range two west, M. D. M., in the district of lands subject to sale at the United States land office at San Francisco, Cal-
18 ifornia, and containing one hundred and seventy-six $\frac{60}{100}$ (176.60) acres, which land has not yet been offered at public sale and thus rendered subject to private entry, and I do hereby declare my intention to claim said tracts of land as a pre-emption right under the provisions of the acts of Congress approved September 4th, 1841; March 3rd, 1853; and section 2259 of the Revised Statutes of the United States.

Given under my hand, this 29th day of December, A. D. 1893.

(Signed) MANUEL S. his x mark. DE CAMBRA.

Witness-:
B. B. NEWMAN.
GEORGE W. LEE.

Signed in the presence of—
B. B. NEWMAN.
GEORGE W. LEE.

(Endorsed:) No. 17,915. Declaratory statement of Manuel S De Cambra. Filed Dec. 29th, 1883.

18½ "EXHIBIT B."

Declaratory Statement for Cases Where the Land is Not Subject to Private Entry.

I, Hannah Rogers, widow of, and for the heirs of Enos J. Rogers, deceased, of Alameda county, California, who was a naturalized citizen of the United States, have on the — day of July, A. D. 1871, settled upon and improved lots 3 and 4, and E. ½ of S. W. quarter of section number 31, in township number one, south of range number two west, M. D. M., in the district of lands subject to sale at the land office at San Francisco, and containing — acres, which land has not yet been offered at public sale and thus rendered subject to private entry, and I do hereby declare my intention to claim said tract of land as a pre-emption right under the provisions of the said act of 4th September, 1841.

Given under my hand, this 3d day of September, A. D. 1883.

her
HANNAH (x) ROGERS.
mark.

Signed in presence of—
H. E. HALL,
Post-office Address: Oakland.

19 (Endorsed:) No. 17,992. Declaratory statement of Hannah Rogers. Filed January 21, 1884.

The foregoing answer and cross-complaint were duly verified by Manuel S. De Cambra and served and filed in due law time.

Demurrer.

(Title of Court and Cause.)

"Now comes the plaintiffs herein, and without waiving their motion to strike out herewith filed, but specially relying thereon, demurs to the cross-complaint of the defendants Manuel S. De Cambra and Francisca De Cambra herein filed, and for grounds of demurrer specifies and assigns:

I.

That said cross-complaint does not state facts sufficient to constitute a cause of action or sufficient to constitute a defense to the complaint of the plaintiff- herein.

Wherefore, plaintiffs pray that they be not further required to appear or to answer the said cross-complaint, but that the same may be dismissed, and that plaintiffs have their costs.

J. E. McELROY,
Attorney for Plaintiffs."

19½ (In the Superior Court in and for the County of Alameda, State of California, Department No. One.)

MONDAY, *June 14th, A. D.* 1897.

Present: Hon. S. P. Hall, judge.

Minute Order No. 13821.

(Title of Court and Cause.)

The demurrer of the plaintiffs Rogers to the cross-complaint of M. S. and Francisca De Cambra came on this day regularly to be heard. Comes now into court J. E. McElroy, counsel for plaintiff- and B. B. Newman, counsel for defendants, and after argument by respective counsel, the court being fully advised in the premises, it is ordered that the demurrer of plaintiff- to the cross-complaint of M. S. and Francisca De Cambra be, and the same is, hereby sustained, and ten (10) days given to defendants in which *time* to amend *that* cross-complaint on file herein, to which ruling of the court the defendants, the De Cambras, then and there duly excepted.

20 *Findings of Fact and Conclusions of Law.*

(Title of Court and Cause.)

The above-entitled action came on regularly for trial on the 20th day of September, A. D. 1897, before the court without a jury, a jury trial having been specially waived by the respective parties in open court.

J. E. McElroy, assisted by C. C. Hamilton, appeared as counsel for plaintiffs, and B. B. Newman, assisted by Snook & Church, appeared as counsel for the defendants Manuel S. Da Cambra and Francisca, sued herein under the name of Jane Doe Da Cambra, her true name being Francisca Da Cambra.

Thereupon, counsel for plaintiffs moved the court to dismiss said action against the fictitious defendants Richard Roe and
20½ John Blue, and such motion was accordingly granted, and the court duly gave, made, and caused to be entered, its order dismissing said action against said defendants Richard Roe and John Blue.

It further appearing to the court that the defendant Jose C. Fontes, after having been regularly served with summons and complaint had appeared and demurred to said complaint, which demurrer had been duly and regularly overruled, and said defendant Jose C. Fontes having failed to answer said complaint within the time granted by the court for answering the same, and his default for not so answering having been duly and regularly entered, and said defendant Jose C. Fontes not appearing at the trial of said action, the court ordered judgment against said defendant Jose C. Fontes in accordance with the prayer of plaintiffs' complaint.

Thereupon, the parties appearing having announced themselves ready, respectively, for trial, the court proceeded with the trial of

said cause upon the complaint of the plaintiffs and the answer of the defendants Manuel S. Da Cambra and Francisca Da Cambra.

Thereupon, oral and documentary evidence was offered, produced, and heard on behalf of the plaintiffs, and the defendants having no evidence whatsoever, the case was submitted to the court for its decision, and the court being fully advised in the premises, and having fully considered the evidence and the law, now renders its decision, and makes and files the following as its findings of fact and conclusions of law:

Findings of Fact.

I.

That, on the 28th day of April, 1897, and for a long time prior thereto, the said plaintiffs Hannah Rogers and Frank J. Rogers were, ever since have been the owners, seized in fee, and still are, the owners and seized in fee, and were, ever since have been, and still are, entitled to the possession of all and singular the land and premises described in plaintiffs' complaint herein.

II.

That on the said 28th of April, 1897, and while said plaintiffs were so the owners of and so entitled to the possession of the land and premises described in plaintiffs' complaint herein, the said defendants, Manuel S. De Cambra and Francisca De Cambra, entered upon and took possession of a portion of the lands and premises described in plaintiffs' complaint herein, consisting of about ninety acres of the same and commonly known as and called "the De Cambra place" or "De Cambra ranch," against the will of said plaintiffs and without their consent, and ever since have withheld and detained and still withhold and detain the possession thereof from said plaintiffs.

21½

Conclusions of Law.

As conclusions of law from the foregoing facts, the court finds:

That said plaintiffs, Hannah Rogers and Frank J. Rogers, are entitled to have and recover, and that they do have and recover, of and from the defendants, Manuel S. De Cambra and Francisca De Cambra, judgment for the restitution of that portion of the land and premises described in the complaint of plaintiffs herein and so withheld from said plaintiffs as aforesaid, commonly known as the "De Cambra place" or the "De Cambra ranch," consisting of about 90 acres of land, and that plaintiffs also have and recover judgment against the defendant Jose C. Fontes for the restitution of the land and premises described in the complaint.

22

Let judgment be entered accordingly.

Done in open court, this 22d day of September, A. D. 1897.

S. P. HALL,
Judge of said Superior Court.

(Endorsed:) Duly filed September 22nd, 1897.

Judgment.

(Title of Court and Cause.)

This cause came on regularly for trial on the 20th day of September, 1897, J. E. McElroy and C. C. Hamilton appearing as counsel for the plaintiff- and B. B. Newman for the defendants, a trial by jury having been expressly waived by the counsel for the respective parties, the cause was tried by the court sitting without a jury. Whereupon witnesses on the part of the plaintiff- and defendant- were duly sworn and examined.

The evidence being closed, the cause was submitted to the court for consideration and decision.

And now, to wit: on this the 22d day of September, 1897, after due deliberation thereon, the court delivered its finding and decision in writing, which is filed, and ordered that judgment be entered in accordance therewith.

22½ Wherefore by reason of the law, and by the finding as aforesaid, it is by the court here ordered, adjudged and decreed that the plaintiffs, Hannah Rogers and Frank J. Rogers, do have and recover of and from the defendants, Manuel S. Da Cambra and Francisca Da Cambra, that portion of the land and premises described in the complaint of plaintiff- herein, commonly known as the "Da Cambra place," or "the Da Cambra ranch," consisting of about 90 acres of land, and that said plaintiffs do have and recover of and from the defendant Jose C. Fontes, the land and premises described in the complaint as lots numbered 3 and 4, and the east half of the southwest quarter of section 31 in township one, south of range two, west of Mount Diablo meridian, in California, containing about 176.60 acres of land, together with their costs herein, amounting to $——.

Judgment entered Sept. 23d, 1897.

FRANK C. JORDAN, *Clerk*,
By F. D. ADAMS, *Deputy Clerk*.

Endorsed: No. 13821. In the superior court of the county of Alameda, dept. No. —. Hannah Rogers, *et al.*, plaintiffs, *vs.* Manuel S. Da Cambra, *et al.*, defendants. Judgment. Entered Sept. 23d, 1897, Judgment Record, No. 26, p. 43.

23 (Title of Court and Cause.)

I, Frank C. Jordan, county clerk of the county of Alameda, State of California, and *ex officio* clerk of the superior court in and for said county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action, and recorded in Judgment Book 26 of said court, at page 43, and I further certify that the foregoing papers hereto annexed constitute the judgment-roll in said action.

Witness my hand and the seal of said superior court, this 23rd day of September, A. D. 1897.

[SEAL.]

FRANK C. JORDAN, *Clerk*,
By F. D. ADAMS, *Deputy Clerk*.

Endorsed: No. 13,821. Civil. Supreior court, county of Alameda, State of California. Hannah Rogers, *et al.*, plaintiff-, *vs.* Manuel S. Da Cambra, *et al.*, defendants. Judgment-roll. Filed Sept. 23, 1897. Frank C. Jordan, clerk, by F. D. Adams, deputy clerk.

23½ *Bill of Exceptions.*

(Title of Court and Cause.)

I.

Be it remembered, and know all men by these presents, that the plaintiffs in this action filed their complaint therein with the clerk of said superior court on the 28th day of April, A. D. 1897, and caused summons to be issued and served together with a copy of the complaint therein, which were duly served, upon the said Manuel S. Da Cambra and Francisca Da Cambra, two of the defendants therein who appeared therein in due time and filed and served their joint answers therein.

II.

That afterward and on the 22d day of September, 1897, said cause came on regularly for trial before the court sitting without a jury, a trial by jury having been waived according to law. That upon said trial the said plaintiffs offered in evidence the paper-writing or patent, issued by the President of the United States on the 2nd day of June, A. D. 1896, and in connection with the offer of said patent further offered to prove that Enos J. Rogers is dead; that
24 Hannah Rogers is the widow and Frank J. Rogers is the son and only child of said Enos J. Rogers, deceased, mentioned in said patent.

And Hannah Rogers, one of the plaintiffs, was thereupon duly sworn as a witness in behalf of the plaintiff-, and testified substantially that she is the widow of Enos J. Rogers; that they intermarried at Virginia City, State of Nevada, in March, 1870, and that her coplaintiff, Frank J. Rogers, is the son of herself and the said Enos J. Rogers, by their said marriage, and that said Frank J. Rogers was the only son, and only child, of said Enos J. Rogers, deceased, and that said Enos J. Rogers died intestate in the year 1882, and that no letters of administration had ever been applied for, or issued, and left no will. Upon such parol evidence being given, the said defendants Manuel S. De Cambra and Francisca De Cambra, interposed the further objection to the introduction in evidence of said paper-writing, or patent, upon the ground that it was now proved by competent evidence that patentee and grantee therein in said patent named, to wit: Enos J. Rogers had died more than thirteen years before said patent was issued or delivered to any one in his name, and therefore said paper-writing was irrelevant, incompetent
24½ and immaterial upon that ground also. The court overruled these objections and these defendants, Manuel S. De Cambra and Francisca De Cambre, then and there duly excepted to said

ruling and decision of the court, and the same is now assigned for error in law, and will be relied upon as error in law on appeal in the Supreme Court, and the same is designated as exception number two.

The court then received in evidence said paper-writing or patent over said objections, and the same was then and there read to the court and designated as "Plaintiffs' Exhibit A," which is as follows, to wit:

PLAINTIFFS' EXHIBIT "A."

"U. S. of America to E. J. Rogers.

"Certificate No. 19844.

"The United States of America to all to whom these presents shall come, Greeting:

"Whereas, Enos J. Rogers, of Alameda county, California, has deposited in the General Land Office of the United States a certificate of the register of the land office at San Francisco, California, whereby it appears that full payment has been made by the said Enos J. Rogers, according to the provisions of the act of Congress of the 24th of April, 1820, entitled 'An act making further
25 provisions for the sale of the public lands,' and the acts supplemental thereto, for the lots numbered three and four and the east half of the southwest quarter section thirty-one, in township one south of range two, west of Mount Diablo meridian, in California, containing one hundred and seventy-six acres and sixty-hundredths of an acre.

"According to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Enos J. Rogers.

"Now know ye, that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Enos J. Rogers and to his heirs the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said Enos J. Rogers, and to his heirs and assigns, forever, subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recog-
25½ nized and acknowledged by the local customs, laws and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law, and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

"In testimony whereof I, Grover Cleveland, President of the

United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

"Given under my hand, at the city of Washington, the second day of June, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and twentieth.

"By the President:

"GROVER CLEVELAND,
"By M. McKEON, *Secretary.*
"L. Q. C. LAMAR,
"*Recorder of the General Land Office.*

"[General Land Office Seal.]

"Recorded volume 34 A, page 187. Recorded at request
26 of Frank J. Rogers, Sept. 8, 1897, at 53 min. past 11 a. m., in Liber C of Patents, page 161 in the E. 4069—1.00.
"Recorder's office of the county of Alameda, State of California.

"CHAS. SPEAR,
"*County Recorder,*
"By C. D. MALONEY,
"*Deputy County Recorder.*"

It was admitted by defendants Manuel S. De Cambra and Francisca De Cambra that they were in the actual possession of 90 acres of the land described in the complaint, which is also described in the paper-writing or patent, "Plaintiffs' Exhibit A," at the time of the commencement of this action, on the 28th of April, 1897, and at all times since then, and still are in such possession, and said portion of said land comprising said 90 acres is commonly known as the De Cambra ranch, or De Cambra place. The plaintiffs having no further evidence, rested their case, which constituted all the evidence submitted to the court upon the trial of said action; the said defendants, Manuel S. De Cambra and Francisca De Cambra, then and there declined to submit any evidence on their behalf; and the case was then and there after argument by the attorneys of the respective parties, submitted to the court for decision, who on said 22nd day of September, 1897, filed its findings of fact
26½ and conclusions of law in writing, which are a part of the judgment-roll, and judgment was in accordance therewith entered on the 23rd day of September, A. D. 1897. And said defendants, Manuel S. De Cambra and Francisca De Cambra, hereby specify the particular errors in law of which they complain, and upon which they shall rely herein on appeal in the Supreme Court, to wit:

I.

They rely upon exception number one, above specified, as error in law, in sustaining plaintiffs' demurrer to defendant's, Manuel S. De Cambra's, cross-complaint in equity, filed in said action, and being exception herein number one in this bill of exceptions.

II.

Second exception is the ruling and decision of the court in admitting in evidence the paper-writing or patent, dated June 2nd, 1896, to Enos J. Rogers, who, as the evidence proved, had died in 1882; and the evidence is insufficient to sustain the decision of the court wherein it finds in its first finding of fact, "That on the 28th day of April, 1897, and for a long time prior thereto, the said
27 plaintiffs, Hannah Rogers and Frank J. Rogers, were, ever since have been, the owners and seized in fee, and still are the owners, and seized in fee, and were, ever since have been, and still are entitled to the possession of all the land and premises described in the plaintiffs' complaint herein," because there is no evidence that connects the said Hannah Rogers, or the — Frank J. Rogers, the plaintiffs, with the paper-writing that issued on June 2nd, 1896, in the name of the dead Enos J. Rogers, who had died more than thirteen years before the date of said patent.

III.

The evidence is insufficient to sustain the second finding of fact in the findings of the court filed, wherein the court finds: "That on the said 28th day of April, 1897, and while the plaintiffs were so the owners of and so entitled to the possession of the land and premises described in the plaintiffs' complaint herein, the said defendants, Manuel S. De Cambra and Francisca De Cambra, entered upon and took possession of a portion of said land and premises described in the plaintiffs' complaint herein, consisting of about 90 acres of the same, and commonly known and called the 'De Cambra place,' or 'De Cambra rancho,' against the will of the plaintiffs, and
27½ without their consent, and ever since have withheld and detained, and still withhold and detain, the possession thereof from said plaintiffs." And said finding II is not sustained by the evidence submitted to the court upon the trial of said action.

IV.

Fourth assignment and specification of error relied upon by said appellants, Manuel S. De Cambra and Francisca De Cambra, to wit: that the conclusions of law drawn by the court from the findings of fact are not sustained by the finding wherein the court finds as a conclusion of law: "That said plaintiffs, Hannah Rogers and Frank J. Rogers, are entitled to have, and to recover, and that they do have and recover of and from the defendants, Manuel S. De Cambra and Francisca De Cambra, judgment for the restitution of that portion of the lands and premises described in the complaint of the plaintiffs herein and so withheld from said plaintiffs, as aforesaid, commonly known as the 'De Cambra place,' or 'The De Cambra ranch,' consisting of about 90 acres of land."

Dated October 5th, A. D. 1897.

B. B. NEWMAN,

Attorney for Defendants and Appellants, Manuel S. De Cambra and Francisca De Cambra.

28 I hereby certify that the foregoing bill of exceptions is true and correct, and is allowed by me, to which I hereby certify and sign, this 9th day of November, A. D. 1897.

S. P. HALL, *Judge.*

(Duly filed November 9th, 1897.)

Notice of Appeal.

(Title of Court and Cause.)

You will please take notice that the defendants, Manuel S. De Cambra and Francisca De Cambra, two of the defendants in the above-entitled action, hereby appeal to the supreme court of the State of California from the order of said superior court made and entered on the 14th day of June, A. D. 1897, sustaining the demurrer of said plaintiffs to the cross-complaint of the said defendants Manuel S. De Cambra and Francisca De Cambra, and from the whole of said order; and hereby also appeal to the supreme court from the judgment therein made and entered in said superior court on the 23rd day of September, 1897, in favor of the plaintiffs in said
28½ action, and against said defendants Manuel S. De Cambra and Francisca De Cambra, and from the whole thereof.

Dated this fifth day of October, 1897.

Yours, etc.,

B. B. NEWMAN,
Attorney for Appellants, Manuel S. De Cambra and Francisca De Cambra.

To the clerk of said superior court, and Messrs. J. E. McElroy and C. C. Hamilton, attorneys for respondents and plaintiffs in said action.

(Endorsed.)

(Title of Court and Cause.)

Due service and receipt of a copy hereof admitted this fifth (5th) day of October, A. D. 1897.

J. E. McELROY AND
C. C. HAMILTON,
Attorneys for Respondents and Plaintiffs in said Action.

Filed October 5th, 1897.

FRANK C. JORDAN, *Clerk,*
By J. CAL. EWING, *Deputy Clerk.*

29 *Certificate.*

(Title of Court and Cause.)

We do hereby certify, stipulate, and agree that the foregoing printed pages contain full, true, and correct copies of the originals thereof now on file and of record in said action in said superior court, and of the whole thereof, and that a sufficient undertaking on appeal, in due form of law, was filed therein on the 5th day of Octo-

ber, A. D. 1897; and that the same constitute a true and correct transcript on appeal in said action.

Dated January 6th, 1898.

J. E. McELROY,
C. C. HAMILTON,
Attorneys for Plaintiffs and Respondents.
B. B. NEWMAN,
Attorney for Defendants and Appellants.

30 Due service of the within is hereby admitted this 10th day of January, 1898.

C. C. HAMILTON,
Attorney for Plaintiff- and Respondents.

31 Filed April 4, 1900.

Department One.

HANNA ROGERS and FRANK J. ROGERS, Plaintiffs and Respondents,
vs.
MANUEL S. DE CAMBRA ET AL., Defendants and Appellants.
} S. F., No. 1271.

This is an action in ejectment. In addition to the answers of defendants, the defendant Manuel S. De Cambra filed a cross-complaint. A demurrer to this cross-complaint having been sustained, the action was tried upon the complaint and the answers thereto in the nature of denials. The plaintiff- offered in evidence a patent from the Government of the United States, running to Enos J. Rogers, his heirs and assigns forever, conveying the property described in the complaint; also testimony showing that plaintiffs are the heirs of the said patentee, who had previously died, Hanna Rogers being the widow, and Frank J. Rogers the son of said deceased. Defendants De Cambra declined to submit any evidence on their part, but admitted possession of ninety acres of the land described in the complaint.

The main point made on the part of the appellants is that the court below erred in sustaining the demurrer to the cross-complaint. The cross-complaint was quite voluminous, covering twenty-three pages of the printed transcript, but the substance of it may be very much condensed. It is alleged that Enos J. Rogers, alias Ignatio Farpelha, in 1871 bought an undivided half interest in a tract of land of four hundred and fifty acres from the appellant Manuel S. Da Cambra, which tract at the time was claimed to be within a private Mexican grant; that by the final survey of said grant in 1878 a portion thereof, including the premises in controversy, was restored to the United States as public lands; that it was agreed between said Rogers and the said Da Cambra that they should make application respectively for certain subdivisions thereof as public lands according to the United States survey; that said De Cambra could

not read or write; that in filing their notices of pre-emption claims Rogers, who it is alleged acted for both, filed on the claim which it had formerly been agreed that De Cambra should have. But it is further alleged that after De Cambra discovered the mistake in 1883 he retained counsel and had a true pre-emption notice and claim prepared and filed for the portion of the claim which it is alleged he was entitled to under the agreement; and that Hanna Rogers, the widow of said Enos J. Rogers, who had in the meantime died, also filed a pre-emption notice; that a contest came on between the plaintiffs as heirs of said Enos J. Rogers, and the defendant, Manuel S. De Cambra, before the register and receiver of the U. S. land office, in April, 1884, and thereafter, in December, 1884, the said register and receiver awarded the land to the Central Pacific R. R. Co. Upon appeal the Commissioner of the General Land Office reversed said decision, and ordered the register and receiver to take further evidence on behalf of the appellants; that further evidence was thereupon taken, and in November, 1890, the register and receiver reversed their decision and awarded the said lot to the heirs of said Enos J. Rogers and his heirs; that upon appeal to the Commissioner of the General Land Office said Commissioner awarded to said appellant Manuel S. De Cambra one-half of all the land and premises described in the complaint; that upon appeal to the Secretary of the Interior a decision was therein rendered in favor of the respondents Hanna Rogers and Frank J. Rogers, as the heirs of said Enos J. Rogers, deceased, upon which decision of the Secretary of the Interior a patent was subsequently issued. But it is alleged in the said cross-complaint that the appeal therein taken by the respondents was not within
32 time; and said defendant in his cross-complaint further, "upon and according to his information and belief, charges and alleges the truth and the fact to be (without any intention whatever to offer or to mean any sort of disrespect to the said Secretary of the Interior, Honorable Hoke Smith) that he never read a word of the evidence submitted to him, said Secretary, on said appeal, by the plaintiff in this cross-complaint, nor upon said appeal of said Hanna Rogers and Frank J. Rogers, but that subordinates, to wit: clerks employed by the Government of the United States in the said Department of the Interior, constructed on the said 9th day of October, 1894, on said two appeals the said decision therein, and procured the said Secretary, Honorable Hoke Smith, merely to put and sign his name to it, which he did without reading, studying, weighing or considering the nature of the said evidence so taken before the said register and receiver, and submitted to them by the said Manuel S. De Cambra and the said Hanna Rogers, as aforesaid, all of which was transmitted to him, the said Secretary, for consideration, by the said register and receiver and Commissioner of the General Land Office, as, by the laws of the United States and rules of said Interior Department, they were bound to do."

A cross-complaint very like the one here was considered in Grant *vs.* Oliver, 91 Cal., 158. In that case the court say: "It is alleged that the name of Thomas was fraudulently used for the benefit of one Benson, and that the Commissioner of the General Land Office

and the Secretary of the Interior, in violation of the legal and equitable claim of the defendant, neglected to read, examine or weigh the evidence taken before them on appeal from the decision of the register and receiver awarding the land to Thomas, and, without an examination of the record, signed and filed written opinions adverse to the claim of defendant, which had been compiled and fabricated by clerks and subordinates." In commenting upon said pleading in that case the court say: "There is no merit in the cross-complaint, and the plaintiff's demurrer to the same was properly sustained. There is nothing in the cross-complaint which takes the case out of the general rule that the action of the Land Department, acting within the scope of its authority, is binding. The land in controversy was within the jurisdiction of the land officers; the merits of the defendant's claim were presented to the Commissioner of the General Land Office on appeal from the decision of the register and receiver awarding the lands to Thomas, and to the Secretary of the Interior on appeal from the decision of the Commissioner, and both of those officers decided adversely to the claim." The opinion of this court upon that cross-complaint and its characterization of the statements, or rather assumptions, therein contained is as follows: "The allegations of the cross-complaint with respect to the conduct of the officers of the Land Department are so absurd that we do not deem it necessary to notice them. If they were true, and could be proved, the defendant would not be entitled to the relief he claims in this action."

The cross-complaint in this case is entitled to no other or better consideration. The boards and officers referred to in the cross-complaint, before whom the respective rights of the parties were submitted and decided, are special tribunals constituted by act of Congress for the disposal of the public lands, and their decision within their jurisdiction has the force and effect of the judgment of a court. This has been so repeatedly determined by the Supreme Court of the United States, aside from the various decisions in this and other States, that it would be a waste of time to refer to them. In Steel *vs.* Smelting Co., 106 U. S., 447, the United States Supreme Court says: "We have so often had
33 occasion to speak of the Land Department, the object of its creation, and the powers it possesses in the alienation by patent of portions of the public lands, that it creates an unpleasant surprise to find that counsel in discussing the effect to be given to the action of that department, overlook our decisions on the subject. That department, as we have repeatedly said, was established to supervise the various proceedings whereby a conveyance of the title from the United States to portions of the public domain is obtained and to see that the requirements of different acts of Congress are fully complied with. Necessarily, therefore, it must consider and pass upon the qualifications of the applicant, the acts he has performed to secure the title, the nature of the land, and whether it is of the class which is open to sale. Its judgment upon these matters is that of a special tribunal, and is unassailable except by

direct proceedings for its annulment or limitation. Such has been the uniform language of this court in repeated decisions."

Being judicial in character, the acts of such boards and officers cannot be delegated. The law presumes they discharge their duties (C. C. P., § 1963, subs. 15–16); and this presumption cannot be overcome by anything contained in the cross-complaint, being loose statements founded not upon facts, but upon information and belief merely.

The parties to the action, as shown by the cross-complaint, are the same as the parties to the proceeding before the United States Land Department; the controversy that was heard and determined there is the same that is sought to be again litigated and determined here. Under well-established rules of law the judgment rendered in the former proceeding is conclusive of the rights of the parties here. C. C. P., § 1903. And it is not a case where equity will decree the holder of the legal title as trustee for appellant.

The demurrer to the cross-complaint was properly sustained. The order sustaining the demurrer, and the judgment for the plaintiffs, are affirmed.

VAN DYKE, *J.*

We concur:
HARRISON, *J.*
GAROUTTE, *J.*

34 In the Supreme Court of the State of California.

HANNAH ROGERS and FRANK J. ROGERS, Plaintiffs and Respondents,
vs.
MANUEL S. DE CAMBRA and FRANCISCA DE CAMBRA, His Wife, Defendants and Appellants.
} S. F., No. 1271.

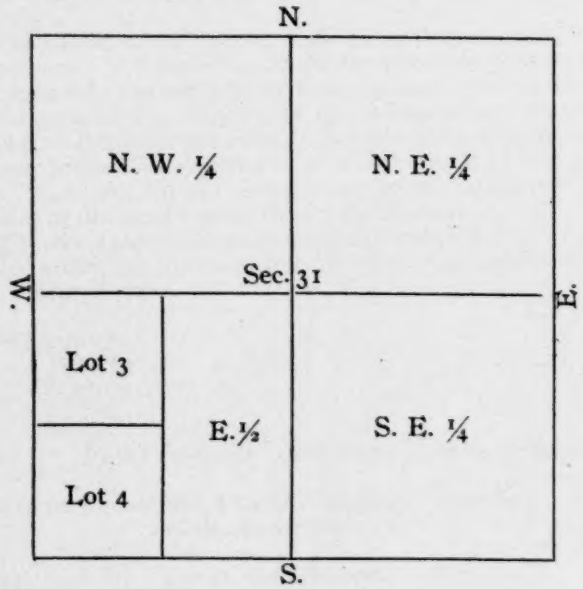
Petition of Manuel S. De Cambra and Francisca De Cambra, Praying that this Cause be Heard and Decided by the Court in Bank, Made Pursuant to Rule XXVIII of the Rules of Court.

B. B. Newman, attorney for petitioners.

Filed April 21st, A. D. 1900.

GEO. W. ROOT, *Clerk*,
By A. E. HORNLEIN,
Deputy Clerk.

Township 1 south, range 2 west of Mount Diablo Meridian.



No. 170.
Delambra } p. 36
v.
Rogers

35 In the Supreme Court of the State of California.

HANNAH ROGERS and FRANK J. ROGERS, Plaintiffs and Respondents,
vs.
MANUEL S. DE CAMBRA and FRANCISCA DE CAMBRA, His Wife, Defendants and Appellants.
} S. F. D., No. 1271.

The Petition of Manuel S. De Cambra and Francisca De Cambra, His Wife, Praying that this Case be Heard and Decided by the Court in Bank, Made Pursuant to Rule XXVIII of the Rules of Court.

To the Honorable W. H. Beatty, chief justice of the supreme court of the State of California:

35½ The petition of Manuel S. De Cambra and Francisca De Cambra, his wife, respectfully shows unto your honor, that the question involved in this case is as to whether or not the cross-complaint in equity filed in this case by Manuel S. De Cambra states a cause of action against the plaintiffs in the action in ejectment.

After denying specifically all the allegations of the complaint at law, Manuel S. De Cambra filed and served with his answer therein a cross-complaint in equity, duly verified by him, which cross-bill begins at the last line of folio 13, page 5, of the transcript on the appeal, and ends at folio 82*a*, page 28*a* thereof, and, omitting in this petition all unnecessary verbiage therein, is as follows (the general demurrer to which was sustained by the court below and affirmed by the honorable department 1 of this court on the 4th day of April A. D. 1900):

And for a cross-complaint in equity Manuel S. De Cambra, one of the defendants in the above-entitled action, as plaintiff in this cross-complaint, complains against Hannah Rogers and Frank J. Rogers, the plaintiffs in the above-entitled action, as defendants in this cross-complaint, and for cause of action alleges:

That in the year 1867 Manuel S. De Cambra, the plaintiff in this cross-complaint, bought for a large sum of money from one
37 Hewett Steele the premises described in the complaint in this action, to wit:

(Here follows diagram marked p. 36.)

Lots numbered three and four, and the east half of the southwest quarter of section thirty-one in township one south of range two west of Mount Diablo meridian, with other adjoining lands, not exceeding four hundred and fifty acres, all of which was then enclosed with fences, and well-known exterior boundaries, and then and there entered into the actual, quiet peaceable, open, notorious, exclusive and adverse possession of all of the said land included within the said exterior boundaries thereof, and has ever since continuously resided thereon, and particularly and specially upon that part thereof described in the complaint in the above-entitled action. That for several years next after said purchase the plaintiff in this cross-complaint, Manuel S. De Cambra, cultivated, used, improved and occupied for farming purposes all of said land within said exterior boundaries, after he had taken said possession under said purchase, as aforesaid, to wit: from the said year, 1867 down to the year 1871. That in the year 1871 the husband of the plaintiff in the foregoing complaint, Hannah Rogers and the father of Frank J. Rogers bought an undivided one-half interest in said tract of four hundred and fifty acres from the plaintiff in this cross-com-
37½ plaint. That said land was then claimed as a private Mexican grant, to wit: "Laguna de Los Palos Colorados," and then actually was within the duly made and confirmed exterior boundaries of said private grant, and so continued to be a part and parcel of said private grant until the 10th day of August, 1878, when, by the final official survey of said grant by the United States, it was ascertained that more than three leagues of land existed within the exterior boundaries of said private grant, and thereupon on, to wit: the 10th day of August, 1878, restored to the United States as a part and parcel of its public lands, and became then on, to wit: August 10, 1878, for the first time, a part of the public domain of the United States of America.

That it was mutually agreed by and between the said Enos J. Rogers, the husband of Hannah, and father of Frank J. Rogers, as aforesaid, and the plaintiff in this cross-complaint, Manuel S. De Cambra, at the time that the plaintiff in this cross-complaint sold an undivided one-half interest in said four hundred and fifty acre tract to said Enos J. Rogers, as aforesaid, that in the event that the said tract of four hundred and fifty acres should be excluded by the final official survey of the said grant, "Laguna de Los Colorados," and become public land of the United States, then, and in
38 that event, the said Enos J. Rogers should and would take the northwest quarter of said section 31, in said township and range, as his pre-emption right and claim, and that the southwest quarter of said section 31, in township and range aforesaid, should be the pre-emption claim of the plaintiff in this cross-complaint, Manuel S. De Cambra.

That afterward, and on the 30th day of July, 1878, the United States Government official survey of said township one, south of range two, west of the Mount Diablo meridian, was filed for record in the proper United States land office, to wit: in the United States land office at San Francisco, California.

That afterward, and on, to wit: the — day of ——, 1878, the said Enos J. Rogers and the plaintiff in this cross-complaint, Manuel S. De Cambra, went to the said United States land office, and then and there, as the plaintiff in this cross-complaint supposed and believed, tendered to the register and receiver, to file as a record in said land office, their respective pre-emption notices of their claims, and that the same were filed on said day with the register and receiver of said land office for their several and respective quarter sections, so respectively claimed by them as aforesaid, to wit:
38½ Enos J. Rogers for the northwest quarter, and the said plaintiff in this cross-complaint, Manuel S. De Cambra, for the southwest quarter of said section 31, in said township and range aforesaid. That the plaintiff in this cross-complaint, Manuel S. De Cambra, is a native of Portugal, but has been for more than thirty-seven years a resident of the United States, and a citizen of the United States for more than twenty years, and the head of a family. That Enos J. Rogers was, in his lifetime, the brother-in-law of the said Manuel S. De Cambra. That Enos J. Rogers was also a native of Portugal, but came to the United States when he was quite young. That he learned to read and write the English language fluently long prior to the time that he went with the plaintiff in this cross-complaint to the said United States land office as aforesaid, to file for record therein their respective pre-emption notices of their claims as aforesaid. That the plaintiff in this cross-complaint requested the said Enos J. Rogers to prepare his (the said Manuel S. De Cambra's) pre-emption claim for, and to include therein, the said southwest quarter of section 31, in said township and range aforesaid, according to its legal subdivisions, as appeared upon the face of said township plat. That the said Enos J. Rogers, instead of doing as thus directed and requested by the plaintiff in this cross-complaint, intentionally, willfully, knowingly, cor-
39 ruptly and fraudulently inserted in the said Manuel S. De Cambra's notice and claim of pre-emption, to which he, to wit: Manuel S. De Cambra, put his cross or mark (being wholly unable to read its contents), the northeast quarter of said section 31, in township and range aforesaid, upon which he, the said Manuel S. De Cambra, had not then, and never had, any dwelling-house or other improvements whatever, and only a small part of which was then in the possession of said Manuel S. De Cambra, and three-fourths of which was utterly worthless, and tendered said pre-emption notice and claim in the name of Manuel S. De Cambra in said land office as a record therein.

That the said Enos J. Rogers then, and at that time, in said United States land office, prepared and signed his name, intentionally, knowingly, willfully and fraudulently, to his pre-emption notice, wherein he claimed the said lots numbered three and four, and the east half of the southwest quarter of section 31, in township and range aforesaid, and then and there tendered the same to said register and receiver, together with their lawful fees for filing the same in the said land office, as a record thereof.

That the plaintiff in this cross-complaint, Manuel S. De Cambra,

did not discover the said fraud that the said Enos J. Rogers
39½ had perpetrated upon him for several years thereafter, and not until the 29th day of December, 1883.

That afterward, and on the 29th day of December, 1883, the plaintiff in this cross-complaint, Manuel S. De Cambra, having retained and employed an attorney-at-law, prepared for him a proper and true pre-emption notice and claim for the said lots three and four, and the east half of southwest quarter of section 31, in township and range aforesaid, and then and there, on the 29th day of December, 1883, tendered the same, with their proper fees and commissions, to the register and receiver of said land office, who then and there received and filed the same as a record in said land office, a copy of which, with the indorsements thereon, is annexed, marked "Exhibit A," to said cross-complaint.

That Hannah Rogers, one of the plaintiffs in the foregoing complaint, and one of the defendants in this cross-complaint, on the 24th day of January, 1884, filed in said United States land office a notice of pre-emption claim for and on behalf of the alleged heirs of said Enos J. Rogers for the same land that the said Manuel S. De Cambra had so filed his claim for on the 29th day of December, 1883, as aforesaid, and therein alleged that the said Enos J. Rogers had settled upon the said tracts and lots of land, a
40 copy of which is annexed to, marked "Exhibit B," and made a part of said cross-complaint.

That afterward, on the 14th day of April, A. D. 1884, and on other days thereafter, the plaintiff in this cross-complaint, Manuel S. De Cambra, appeared before the said register and receiver in said land office, with his witnesses, and proved by two and more competent witnesses, and other competent and legal evidence, that he was, in the year 1869, a citizen of the United States, and that when he filed his said pre-emption notice of his claim in said land office on the 29th of December, 1883, he was the head of a family and a citizen of the United States, and that he had then, and at all times since the year 1867, a dwelling-house upon said land so claimed by him, and used, occupied and claimed the same at all times since his settlement thereon in 1867 as his pre-emption right, and that he did not leave land of his own to settle upon said land so claimed by him as his pre-emption right, and that he was not at the time he settled upon said land so claimed by him as his pre-emption in 1867, nor at any time since then, and never was, the owner of three hundred and twenty acres of land in any State or Territory of the United States, and that he never had any other right of pre-emption to any other land (except to the said lots three and
40½ four and the east half of the said southwest quarter of section 31, in said township and range aforesaid) in any other State or Territory of the United States; and that said land so claimed by him as his pre-emption right was not at any time mineral land, or within any reservation made by the United States or otherwise, and that he, the said Manuel S. De Cambra, had made no agreement or contract with any person or persons whomsoever by which the title he may acquire from the Government of the United States for

said land so claimed by him as his pre-emption right should inure in whole or in part to the benefit of any other person or persons except himself; and then and there tendered competent evidence to said register and receiver to prove, and did prove, every matter and thing required of him by the pre-emption laws, so called, of the United States, to entitle him to enter said lots and tracts so claimed by him as his pre-emption right, and to entitle him to obtain letters patent of the United States therefor; and then was, and ever since has been, and still is, and always shall continue to be, ready to pay to the United States the proper purchase price of said lots and tracts of land so claimed by him as his pre-emption right and pre-emption claim, as aforesaid, with the proper fees and commissions
41 of said land officers in and about the same, as provided by the laws of the United States, and the rules and regulations promulgated by the Secretary of the Interior.

That Hannah Rogers presented some evidence to said register and receiver on the said 14th day of April, 1884, and at other times, in support of the said claim of the alleged heirs of Enos J. Rogers.

That on the 4th day of December, 1884, the said register and receiver rendered their decision therein, and denied the claims and rights of the said Manuel S. De Cambra, and the said claim of Hannah Rogers set up by her for said heirs, and awarded all of said lots and tracts of land to the Central Pacific Railroad Company of California.

That from said decision of the register and receiver the said Manuel S. De Cambra, by his attorney, appealed to the Commissioner of the General Land Office at Washington, in the District of Columbia. That the said Hannah Rogers also appealed, by her attorney, to said Commissioner from the said decision.

That upon said appeals the Commissioner of the General Land Office reversed the said decision appealed from, and therein ordered the register and receiver to take further evidence therein on behalf of said appellants.

41½ That the register and receiver, on the 17th day of November, 1890, wrongfully, by the misconstruction of the evidence submitted to them and the misapplication of the law to the evidence, and in violation of the just and equitable rights and claims of Manuel S. De Cambra, the plaintiff in this cross-complaint, rendered their opinion therein awarding all of said lots three and four, and the east half of the southwest quarter of said section 31, to the heirs of Enos J. Rogers.

That from the said decision of the register and receiver, Manuel S. De Cambra, by his attorney, appealed to the said Commissioner of the General Land Office. That upon said appeal the said Commissioner of the General Land Office, on the 19th day of August, 1892, reversed the said decision of the register and receiver, and ordered that a joint entry be made of lot three and the east half of the southwest quarter of said section 31 in the name of Hannah Rogers, on behalf of the alleged heirs of Enos J. Rogers, and Manuel S. De Cambra, the plaintiff in this cross-complaint.

That the plaintiff in this cross-complaint, in due time, as allowed

by the settled and fixed, printed and published rules of the Department of the Interior of the United States, to wit: within sixty days after receiving notice of the said
42 Commissioner of the General Land Office, appealed to the Secretary of the Interior of the United States from that part of the said decision of the Commissioner of the General Land Office which he, by misconstruction of the evidence and misapplication and misinterpretation of the law applicable to the evidence, wrongfully refused to award to the said Manuel S. De Cambra, the plaintiff in this cross-complaint, the remaining undivided one-half of lot three, and the east half of the southwest quarter of said section 31, and the whole of lot 4 thereof, in township and range aforesaid, which the said Commissioner of the General Land Office, by misconstruction of the law applicable to the evidence submitted to said register and receiver and to said Commissioner by Manuel S. De Cambra, wrongfully and in violation of the lawful and just claims and rights of the said Manuel S. De Cambra under the laws of the United States, and particularly under the provisions of chapter 4 of title XXXII of the Revised Statutes of the United States, then in full force, effect and virtue, wrongfully and against the laws of the United States, awarded the same to the alleged (so-called) heirs of Enos J. Rogers, the plaintiffs in the foregoing complaint, and the defendants in this cross-complaint.

That the said Hannah Rogers and Frank J. Rogers, the
42½ defendants in this cross-complaint, and their attorney, J. W. Shanklin, Esq., *were duly notified*, and had due and full notice of the said decision of the Commissioner of the General Land Office so awarding to said Manuel S. De Cambra the said undivided one-half of the said lot 3 and the east half of the said southwest quarter of section 31, in said township and range.

That neither the said Hannah Rogers, Frank J. Rogers, nor their said attorney, or any other person on their behalf, took any appeal to the said Secretary of the Interior from the said decision of the Commissioner of the General Land Office within the time allowed by the laws of the United States and the said rules of the Department of the Interior, within sixty days after the service of said notice of the decision of the Commissioner upon them, and their full knowledge thereof; but that they, the said Hannah Rogers and Frank J. Rogers, long after the time allowed them by the laws of the United States and the rules of the Department of the Interior, took an appeal from said decision and judgment of the Commissioner to the Secretary of the Interior from that part of the decision of the said Commissioner which awarded the said plaintiff in this cross-complaint the said undivided one-half of lot 3 and the east
43 half of the southwest quarter of said section 31, in said township and range aforesaid.

That upon the said appeal so wrongfully taken by and on behalf of Hannah Rogers and Frank J. Rogers to the Secretary of the Interior, a decision was thereafter, and on, to wit: the 9th day of October, 1894, rendered therein, purporting to be the decision of the Secretary of the Interior therein, but which the plaintiff in this cross-

complaint, upon and according to his information and belief, and upon information and belief, charges and alleges the truth and the fact to be (without any intention whatever to offer or to mean any sort of disrespect to the said Secretary of the Interior, Honorable Hoke Smith), that he never read a word of the evidence submitted to him, said Secretary, on said appeal by the plaintiff in this cross-complaint, nor upon the said appeal of said Hannah Rogers and Frank J. Rogers, but that subordinates, to wit: clerks employed by the Government of the United States in the said Department of the Interior, constructed on the said 9th day of October, 1894, on said two appeals, the said decision therein, and procured the said Secretary, Honorable Hoke Smith, merely to put and sign his name to it, which he did without reading, studying, weighing or considering any of the said evidence so taken before the said register and
43½ receiver and submitted to them by the said Manuel S. De Cambra and Hannah Rogers, as aforesaid, all of which was transmitted to him, the said Secretary, for consideration, by the said register and receiver and Commissioner of the General Land Office, as, by the laws of the United States and rules of said Interior Department, they were bound to do.

And the said Manuel S. De Cambra hereby alleges and charges the truth and the fact to be that the said Honorable Hoke Smith, the then Secretary of the Interior, and who purports to have rendered a decision on said appeals on the 9th day of October, 1894, awarding all of said lots and tracts of land to the said alleged heirs of Enos J. Rogers, never, at any time whatever, examined, construed or considered any part of the evidence submitted to him on said appeals, nor constructed any decision whatever therein, and especially and particularly the decision therein signed by him on the 9th day of October, 1894, as aforesaid.

That upon the said so-called and pretended decision of the Honorable Hoke Smith, the then Secretary of the Interior, letters patent of the United States, wrongfully and in violation of the laws of the United States and the vested rights of the plaintiff in this cross-com-
44 plaint, Manuel S. De Cambra, were issued under the seal of the General Land Office, on or about the 2d day of June, A. D. 1896, and delivered to Hannah Rogers, for and on behalf of herself and Frank J. Rogers, the plaintiffs in the foregoing complaint and the defendants in this cross-complaint, as the alleged heirs of Enos J. Rogers.

The plaintiff in this cross-complaint in equity, Manuel S. De Cambra, charges and alleges that, by reason of the failure of the Honorable Hoke Smith, the Secretary of the Interior, to personally examine and consider the said evidence submitted to him on the said appeal by Manuel S. De Cambra, as aforesaid, nor to render any personal decision, judgment or decree thereon on said appeal, or otherwise, the said Manuel S. De Cambra, the plaintiff in this cross-complaint, has been and is deprived of his right, title, interest and property in the said lands, tracts and parcels of land designated and known as lots 3 and 4 and the east half of the southwest quarter of section 31, in township 1 south of range 2, west

of the Mount Diablo base and meridian, containing 176.60 acres of land, all of the value of $2,500 in the lawful money of the United States, without due process of law, and contrary to and in violation of the laws of the United States, and especially and particularly against and contrary to the fourteenth amendment to the
44½ Constitution of the United States. And the said plaintiff in this cross-complaint specially pleads and sets up herein the laws of the United States as guaranteeing to him protection and safety in the prosecution and assertion of his said pre-emption claim and right under the pre-emption laws of the United States continuously from the time he filed and caused to be recorded in the United States land office at San Francisco, California, on the 29th day of December, 1883, his notice of intention to claim said lots and tracts of land as his pre-emption right under the said laws of the United States, down to the present time. And further and especially pleads, asserts and contends that his, the said Manuel S. De Cambra's, right and title to said tracts and lots of land has been taken away from him, the said Manuel S. De Cambra, by the wrongful acts of said land officers, as aforesaid, and wrongfully and unlawfully given over, by letters patent of the United States, to Hannah Rogers and Frank J. Rogers, the pretended heirs of Enos J. Rogers, in violation of and contrary to the spirit, intent and meaning of the fourteenth amendment of the Constitution of the United States of America, under which he, the said Manuel S. De Cambra, claims the protection of his rights and claims in and to said tracts of land aforesaid.

45 That the plaintiff in this cross-complaint hereby tenders and offers to pay into court the sum of $202.75 to and for the use of Hannah Rogers, as being the sum she paid to the register and receiver for said tracts and lots of land on the 17th day of July, 1895, together with such other proper costs and charges as she may have lawfully paid to said land officers for their fees or commissions therein.

Wherefore the plaintiff in this cross-complaint prays:

First. For the order, judgment and decree of this honorable court, decreeing that the said defendants in this cross-complaint, Hannah Rogers and Frank J. Rogers, as the alleged heirs of Enos J. Rogers, hold the legal title to the premises hereinbefore described, under letters patent of the United States, as trustees for this plaintiff. That, by said order, judgment and decree, said letters patent be canceled and annulled, as having been improvidently issued by the land officers of the United States, and against the laws of the United States, and against the fourteenth amendment of the Constitution of the United States of America.

Second. That the plaintiff in this cross-complaint may, by said order, judgment and decree, be forever quieted in his claim, right, title and possession in and to said lots, tracts and parcels of
45½ land.

And finally, the said plaintiff in this cross-complaint, Manuel S. De Cambra, prays for such other and further, or other and further, relief in the premises as to this honorable court may seem

meet and as to equity appertains and belongs, and he will, as in duty bound, ever pray.

Dated May 25, A. D. 1897.

B. B. NEWMAN,

Attorney for Manuel S. De Cambra and Francisca De Cambra, Two of the Defendants in the Above-entitled Action at Law, and Attorney for Manuel S. De Cambra, Plaintiff in the Foregoing Cross-complaint in Equity.

No. 604 Merchant street, San Francisco.

"EXHIBIT A."

Declaration and Statement of Pre-emption for Land Not Subject to Private Entry.

Manuel S. De Cambra, of the county of Alameda, and State of California, being the head of a family and a citizen of the United States, did, on or about the 27th day of October, 1867, settle upon and improve, and has ever since claimed, occupied and improved, the lots 3 and 4, and E. ½ of S. W. quarter of section 31, in township one south, range two west, M. D. M., in the district of lands
46 subject to sale at the United States land office at San Francisco, California, and containing one hundred and seventy-six and sixty one-hundredths (176.60) acres, which land has not yet been offered at public sale, and thus rendered subject to private entry, and I do hereby declare my intention to claim said tracts of land as a pre-emption right under the provisions of the acts of Congress approved September 4th, 1841; March 3rd, 1853; and section 2259 of the Revised Statutes of the United States.

Given under my hand this 29th day of December, A. D. 1893.

(Signed) MANUEL S. (his x mark) DE CAMBRA.

Witness-:
B. B. NEWMAN.
GEORGE W. LEE.

Signed in presence of—
B. B. NEWMAN.
GEORGE W. LEE.

(Endorsed:) No. 17,915. Declaratory statement of Manuel S. De Cambra. Filed Dec. 29th, 1883.

"EXHIBIT B."

Declaratory Statement for Cases Where the Land is Not Subject to Private Entry.

46½ I, Hannah Rogers, widow of, and for the heirs of, Enos J. Rogers, deceased, of Alameda county, California, who was a naturalized citizen of the United States, have on the — day of

July, A. D. 1871, settled upon and improved lots 3 and 4 and E. ½ of southwest quarter of section number 31, in township number one, south of range number two west, M. D. M., in the district of lands subject to sale at the land office at San Francisco, and containing — acres, which land has not yet been offered at public sale and thus rendered subject to private entry, and I do hereby declare my intention to claim said tract of land as a pre-emption right under the provisions of the said act of 4th of September, 1841.

Given under my hand this 3d day of September, A. D. 1883.

her
HANNAH (x) ROGERS.
mark.

Signed in presence of—
H. E. HALL,
Post-office Address: Oakland.

(Endorsed:) No. 17,992. Declaratory statement of Hannah Rogers. Filed January 21, 1884.

47 The foregoing answers and cross-complaint were duly verified by Manuel S. De Cambra and served and filed in due law time.

Demurrer.

(Title of Court and Cause.)

"Now come the plaintiffs herein, and without waiving their motion to strike out herewith filed, but specially relying thereon, demurs to the cross-complaint of the defendants Manuel S. De Cambra and Francisca De Cambra herein filed, and for grounds of demurrer specifies and assigns:

I.

That the said cross-complaint does not state facts sufficient to constitute a cause of action or sufficient to constitute a defense to the complaint of the plaintiff- herein.

Wherefore, plaintiffs pray that they be not further required to appear or to answer the said cross-complaint, but that the same may be dismissed, and that plaintiffs have their costs.

J. E. McELROY,
Attorney for Plaintiffs."

Minute Order No. 13821.

(Title of Court and Cause.)

The demurrer of the plaintiffs Rogers to the cross-complaint of M. S. and Francisca De Cambra came on this day regularly to be heard. Comes now into court J. E. McElroy, counsel for plain-
47½ tiff- and B. B. Newman, counsel for defendants, and after argument by respective counsel, the court being fully advised in the premises, it is ordered that the demurrer of plaintiff- to the cross-complaint of M. S. and Francisca De Cambra be, and the same is, hereby

sustained, and ten (10) days given to defendants in which *time* to amend *that* cross-complaint on file herein, to which ruling of the court the defendants, the De Cambras, then and there duly excepted.

Your petitioners respectfully submit, that as against the principle announced in the decision of the honorable department 1, to the effect that the decision of the Land Department is binding upon the courts of equity, both of the State and United States, there are many sound decisions, both in the State and United States courts, clearly to the contrary.

Two decisions, one of this court and one of the Supreme Court of the United States, are referred to by the honorable department 1 in support of the judgment pronounced in this case. Against the one referred to in the 91 Cal. 158, your petitioners respectfully refer to the case of Bird *vs.* Wilcox, 45 Cal. 686, which shows that a general demurrer to a like bill was reversed by the Supreme Court.

Nor do your petitioners appreciate the harsh expression of
48 the *the* decision which declares it is "absurd" to state that the honorable Secretary of the Interior did not read the evidence, nor any part of it, on the appeal to him by Manuel S. De Cambra, involving the land in suit, in the face of the admitted fact by the demurrer that he did not. Nor can the presumption invoked from section 1963, subdivisions 15 and 16, avail, in the face of the admitted fact that the honorable Secretary of the Interior did not read the evidence, nor consider it at all, nor construct the decision in the case, and it was deemed by your petitioners' attorney an act of duty and justice on his part to exonerate the honorable Secretary from rendering a decision so utterly unfounded under the law and the evidence in the case. Nor is section 1903 of the Code of Civil Procedure, referred to by the honorable department 1, less inapplicable, in the face of the admitted fact that the Secretary of the Interior did not decide the case appealed to him by Manuel S. De Cambra, and the allegation in the cross-complaint in equity, "upon information and belief," that the honorable Secretary of the Interior did not read the evidence, nor construct the decision, is no less potential in a duly verified pleading than if the allegation was made in the unqualified form, as the allegation is admitted by the demurrer.

48½ Your petitioners, in view of the decision of the honorable department 1 pronounced in this case, to the full length, that the decisions of the land officers are final, and binding upon injured litigants, as well as upon the courts of justice, both of the State as well as the United States, beg to submit authorities of the Supreme Court of the United States, as the court of last resort in all such cases, contrary to the doctrine announced in this case by the honorable department 1 of this court.

In the case of Wilcox *vs.* Jackson, 13 Peters, 498–517, declared over sixty years ago, that, "We hold the true principle to be this, that whenever the question in any court, State or Federal, is whether a title to land which had once been the property of the United States has passed, that question must be resolved by the laws of the United States."

Cunningham *vs.* Ashley 14, Howard, 377–388. The court said (page 388): "The officers of the Government are the agents of the law. They cannot act beyond its provisions, nor make compromises not sanctioned by it." (Page 389:) "Upon this view we are brought to the conclusion that the entries on which the defendant's patents were issued were void, so far as they interfere with the claim of complainant, and that consequently the patents are also void."

49 Garland *vs.* Wynn, 20 Howard, 6, 7, 8. The court said (page 7, last four lines): "Garland insists in an amended answer, in the nature of a distinct plea (demurrer in the case at bar), that by the law of the land the circuit court (of the State of Arkansas) had no authority or jurisdiction to set aside or correct the decision of the register and receiver, and that their adjudication and judgment in granting and allowing the pre-emption rights to and in the name of Hemphell was final and conclusive and cannot be inquired into, or in any manner questioned, modified or set aside." (On page 8): "The question is, have the courts of justice power to examine a contested claim to a right of entry under the pre-emption laws, and to overrule the decision of the register and receiver, confirmed by the Commissioner, in a case where they have been imposed upon by *ex parte* affidavits, and the patent has been obtained by one having no interest secured to him in virtue of the pre-emption laws, to the destruction of another's right, who had a preference of entry, which he preferred and exerted in due form, but which right was defeated by false swearing and fraudulent contrivance, brought about by him to whom the patent was awarded? * * * Nor do the regulations of the Commissioner of the General Land Office, whereby a party may be heard to prove his better

49½ claim to enter, oust the jurisdiction of the courts of justice. We announce this to be the settled doctrine of this court."

It was, in effect, so held in the case of Lyttle *vs.* State of Arkansas, 9 How. 328; next in the case of Cunningham *vs.* Ashley, 14 How. 377, and again in the case of Bernard *vs.* Ashley, 18 How. 44.

Lindley *et al. vs.* Hawes *et al.*, 2 Black 554–556. The court, by Mr. Justice Miller said (at page 556): "It is claimed by counsel for Hawes that the action of the land officers, including that of the Commissioner, was a conclusive and final adjudication of the matters now set up in plaintiff's complaint, and that the courts of law cannot go behind these proceedings to correct any injustice which may have been done to the plaintiff. The proposition thus broadly stated, and as necessarily so stated by the defendant's counsel to avail him in this case, cannot be conceded. (Page 554) * * * A court of equity may inquire into the proceedings by which the title vested in Hawes, and afford relief, if a proper cause for it is shown to exist. That this is the settled doctrine of this court a reference to a few of its decisions will show." The justice then refers to the cases of Cunningham *vs.* Ashley *et al.*, 14 Howard 377; Bernard's Heirs *vs.* Ashley's Heirs, 18 Howard 43; Garland *vs.* Wynn, 20 Howard 8; Lyttle *vs.* State of Ar-

50 kansas, 22 Howard 192, and continuing (on page 459) said (the same member of the court delivering its opinion): "An-

other preliminary question is presented on this record, namely, whether the adjudication of the register and receiver, which authorized Cloy's heirs to enter the land, is subject to revision in courts of justice, on proof showing that the entry was obtained by fraud and imposition of false testimony on those officers as to settlement and cultivation. We deem this question too well settled in the affirmative for discussion." As shown on page 563, it is decided that the complainants were entitled to the relief prayed for against the patentee and his heirs and grantees.

The State of Minnesota *vs.* Bachelder, 1 Wallace 109–115. Mr. Justice Nelson, speaking for the court, said (at top of page 115): "As we have seen, the defendant * * * relies on patents. To these the plaintiff replies that they were obtained by fraud and misrepresentation; that L. and J. Mills did not settle on the premises, nor erect a dwelling-house thereon, nor make any improvements on the same * * * and besides their false representations to the register and receiver, they procured one George Dazner to make a false affidavit as evidence of settlements, erection of the dwelling-houses and improvements before these officers.
50½ The court below refused to give any effect to these facts, as set forth in the pleadings * * * and the ground to uphold these rulings is, that the decision of the register and receiver, and certificates issued, were conclusive upon the courts and not reversable or to be inquired into, and that the remedy of the party aggrieved was by an application to the Commissioner of the General Land Office or Secretary of the Interior. These questions have been so often before the court, and so fully considered in the last case (Lindley *et al. vs.* Haws *et al.*, 2 Black. 554, 557, 558), where all the authorities are collected, that it would be a waste of time to examine them. A court of equity will look into the proceedings before the register and receiver, and even into those of the land office or other officer, where the right of property of the party is involved, and correct errors of law or of fact to his prejudice." (Page 116.) "The court below, therefore, erred in its rulings on the demurrer, and also on the trial of the issues in fact. * * * The judgment of the court below is reversed, with costs, and the cause remanded, with directions to enter judgment overruling the demurrer."

Duluth and Iron R. R. Co. *vs.* Roy, 173 U. S. 587, 590, 591.

Mr. Justice McKenna, delivering the opinion of the court,
51 said (at page 590): "It is too well established to need argument to support, or a citation of authorities, that when a patent is obtained from the United States by fraud, mistake or imposition, the question thence arising becomes one of private right, and the courts, in a proper proceeding, and in execution of justice, will divest or control the title thereby acquired, either by compelling a conveyance to the plaintiff, or by quieting his title, as against the dedefendants, and enjoining them from asserting theirs."

And in two late cases, Germania Iron Co. *vs.* United States, 165 U. S. 379, and Williams *vs.* United States, 138, U. S. 514 (top of page 541): "And because of the well-established principle that where an

individual in the prosecution of a right has done that which the law requires him to do, and he has failed to attain his right by the misconduct or neglect of a public officer, the law will protect him. Lyttle *vs.* Arkansas, 9 Howard 314."

Ard *vs.* Brandon, Ard *vs.* Pratt, 156, U. S. 537–541.

Mr. Justice Bremer, speaking for the court, said (at top of page 541): "But it is equally clear * * * that no adjudication against the Government in a suit by it to set aside a patent estops an individual not a party thereto from thereafter setting up his
51½ equitable rights in the land for which the patent was issued."

Referring to allegations in the bill of the United States in that case of matters very like those presented here, Mr. Justice Harlan, speaking for the court, said (page 379): "If the facts are as thus alleged, it is clear that the Missouri-Kansas Company holds patents to land * * * which equitably belongs to *bona fide* settlers who, acquired rights under the homestead and pre-emption laws, which were not lost by reason of the Land Department having by mistake, or an erroneous interpretation of the statutes in question, caused patents to be issued to the company." And (on page 542) continuing, the justice said: "In all such cases the first (settler) in time in the commencement of proceedings for the acquisition of the title, when the same are regularly followed up, is deemed to be the first in right." And (on page 543) he said: "There can be no question as to the good faith of the plaintiff below. He went upon the land with a view of making it his home. He has occupied it ever since. He did all that was in his power in the first instance to secure the land as a homestead. That he failed was not his fault."

How applicable to the facts of your petitioner Manuel S. De Cambra's case, as stated in his cross-complaint in equity in this
52 case, are the statements of the facts in the last above case.

(1.) The cross-complaint alleges that Manuel S. De Cambra bought for a large sum of money 450 acres of land, in 1867, including the land in controversy, and went to live at that time, and has ever since lived, upon the land in suit. That he was the head of a family and a citizen of the United States in 1869.

(2.) That when he sold an undivided half interest in the 450 acres in 1871, to Enos J. Rogers, it was agreed by them that if the land should become public land Manuel S. De Cambra should have as his pre-emption right the southwest quarter, upon which he had his dwelling-house, and Enos J. Rogers the northwest quarter of the said section 31.

(3.) In 1878, when the plat of the township was filed in the land office, Manuel S. De Cambra and Enos J. Rogers went together to the land office to file their respective pre-emption notices for their supposed respective quarter sections in accordance with the agreement of 1871, but instead of honestly and faithfully carrying out that contract and Manuel S. De Cambra's request to Rogers to file his notice of pre-emption for the southwest quarter, which was divided into lots 3 and 4 and east half of the southwest quarter of sec-

tion 31, got De Cambra to put his name to a pre-emption no-
52½ tice for the northeast quarter of section 31, which De Cambra never claimed, and never had a dwelling-house or other improvements on. De Cambra, not being able to read or write the contents of that notice, put his cross to it at the request of Rogers with the false statement that it was for the southwest quarter, and to consum-ate the vile fraud Enos J. Rogers filed for the southwest quarter, according to its subdivisions, and thereby consum-ated as vile a fraud upon Manuel S. De Cambra as did the vile King David upon Uriah, as appears in Book II of Samuel, chapter XI of the Bible, wherein it is said:

Verse 8. And David said to Uriah, Go down to thy house. * * *

Verse 9. But Uriah slept at the door of the King's house. * * *

Verse 10. And when they (David's servants) had told David Uriah went not down to his house * * * David sent for him and said, Why then didst thou not go down to thine house?

Verse 11. And Uriah said to David * * * Joab and the servants (of David) are encamped in open fields. Shall I then go into mine house and eat? * * * As my soul liveth and as thine (David's) liveth I will not do so. * * *

Verse 14. In the morning David wrote a letter to Joab and
53 sent it by Uriah. And David wrote in the letter to Joab, Set ye Uriah in the forefront of the hottest of the battle and retire ye from him that he may be smitten and die.

Verse 16. Joab assigned Uriah to a place where the valiant men of the Philistines were, and Uriah was killed," as the vile David desired it should be.

Verse 21. The pliant Joab sent his messenger to David, in a mask of detestable duplicity, saying, "Then thou shalt say (to David) thy servant Uriah, the Hittite, is dead also."

Which vile and infamous wickedness of David and Joab toward Uriah is no less than the abominable fraud perpetrated by Enos J. Rogers upon Manuel S. De Cambra in fraudulently assuring him that he was signing his mark for the southwest quarter, whereas it was fraudulent for the northeast quarter of section 31, which has resulted in depriving, as far as fraud, dishonesty, knavery and wickedness could defraud, Manuel S. De Cambra and his family out of their home and property, which he acquired for a large sum of money more than thirty-three years ago, and which he and his family have resided upon, claimed and occupied, under the pre-emption laws of the United States, down to this day.

Morrison *vs.* Slanakier, 104 U. S. 213, was an action of eject-
53½ ment founded upon a patent of the United States, to which the defendant answered in the nature of a bill in chancery, and sets up that in fraud of his pre-emption rights, and by mistake of the Land Department in regard to them, a patent of the United States for the land was issued to the plaintiff. Judgment was rendered for Morrison in the court of original jurisdiction. It was reversed on appeal to the supreme court of the State, and the judgment of the supreme court affirmed by the Supreme Court of the United States. (The above quotation is taken from page 214.)

Steel *vs.* Smelting Co., 106 U. S., 447, which is referred to by honorable department 1 in its decision in this case, shows (page 448) that the only pretense of claim the defendants in that action asserted was "by superiority of possessory title and priority of actual possession," and in no way or manner connected themselves with the source of title, the United States.

How different and potential are the allegations in Mr. De Cambra's cross-complaint in equity. And even in that case it is stated that the judgments of the Land Department are assailable "by direct proceedings for its annulment (the patent) or limitation," which in that case could not be asserted, as the defendants had no connection with the United States, whereas Manuel S. De Cambra is
54 clearly in privity with the source of title, the United States, and clearly in a position to defend his title in a court of chancery, as he has done in this case.

We respectfully submit that the Grant *vs.* Oliver case, 91 Cal. 158, belongs to the line of cases overruled by the Supreme Court of the United States, and that the case of Steel *vs.* Smelting Co., 106 U. S. 447, is no less inapplicable to the case at bar, for it there clearly appears that the party who sought to attack the patent of the United States had no sort of connection with, or was in privity with, the title of the United States to the land involved in that suit, whereas, on the direct contrary, Manuel S. De Cambra is, and has continuously been for more than twenty-five years before the patent issued for the land involved in this case, in privity with and sought title thereto in every respect, as required by the pre-emption laws of the United States, and for that reason is in a position to assert his legal and equitable rights to the property in suit, both in the courts of the State and courts of the United States.

Wherefore your petitioners respectfully pray that this, their petition, be granted, to the end that justice and equity may be done in the premises, and that this cause be heard and decided by the court in bank.

Most respectfully submitted.

55 B. B. NEWMAN,
Attorney for Petitioners.

Dated April 20th, A. D. 1900.

56 *Minute Order.*

In the Supreme Court of the State of California.

SATURDAY, *May 5th*, 1900.

ROGERS *vs.* DE CAMBRA. } S. F., 1271.

By the COURT:

Judgment of department vacated and cause ordered to a hearing

before court in bank to be placed on July bank calendar for argument. The clerk will notify the parties thereof.

May 4, 1900.

BEATTY, *C. J.*
TEMPLE, *J.*
HENSHAW, *J.*

57 (S. F., No. 1271. In Bank. April 30, 1901.)

HANNA ROGERS and FRANK J. ROGERS, Plaintiffs and Respondents,
vs.
MANUEL S. DE CAMBRA ET AL., Defendants and Appellants.

Appeal from superior court of Alameda county—S. P. Hall, judge.

For appellants, B. B. Newman.
For respondents, J. E. McElroy, C. C. Hamilton.

U. S. Land Department—Decision of—Presumption of performance of duty.—The decision of the United States Land Department, acting within the scope of its authority, is conclusive and unassailable except by direct proceedings for its annulment or limitation. Being judicial in character, its acts cannot be delegated; the law will presume that its officers perform their duties, and this presumption cannot be overcome by loose allegations made upon information and belief that a decision of this department was rendered without an examination of the evidence by the Secretary of the Interior.

Upon the hearing of this case in department one, the following opinion was therein rendered, to wit:

"This is an action in ejectment. In addition to the answers of defendants, the defendant Manuel S. De Cambra filed a cross-complaint. A demurrer to this cross-complaint having been sustained, the action was tried upon the complaint and the answers thereto in the nature of denials. The plaintiff- offered in evidence a patent from the Government of the United States, running to Enos J. Rogers, his heirs and assigns forever, conveying the property described in the complaint; also testimony showing that plaintiffs are the heirs of the said patentee, who had previously died, Hanna Rogers being the widow, and Frank J. Rogers the son of said deceased. Defendants De Cambra declined to submit any evidence on their part, but admitted possession of ninety acres of the land described in the complaint.

The main point made on the part of the appellants is that the court below erred in sustaining the demurrer to the cross-complaint. The cross-complaint was quite voluminous, covering twenty-three pages of the printed transcript, but the substance of it may be very much condensed. It is alleged that Enos J. Rogers, alias Ignatio Farpelha, in 1871 bought an undivided half interest in a tract of land of

four hundred and fifty acres from the appellant Manuel S. De
58 Cambra, which tract at the time was claimed to be within a private Mexican grant; that by the final survey of said grant in 1878 a portion thereof, including the premises in controversy, was restored to the United States as public lands; that it was agreed between said Rogers and the said De Cambra that they should make application respectively for certain subdivisions thereof as public lands according to the United States survey; that said De Cambra could not read or write; that in filing their notices of pre-emption claims, Rogers, who it is alleged acted for both, filed on the claim which it had formerly been agreed that De Cambra should have. But it is further alleged that after De Cambra discovered the mistake in 1883 he retained counsel and had a true pre-emption notice and claim prepared and filed for the portion of the claim which it is alleged he was entitled to under the agreement; and that Hanna Rogers, the widow of said Enos J. Rogers, who had in the meantime died, also filed a pre-emption notice; that a contest came on between the plaintiffs as heirs of said Enos J. Rogers, and the defendant, Manuel S. De Cambra, before the register and receiver of the U. S. land office, in April, 1884, and thereafter, in December, 1884, the said register and receiver awarded the land to the Central Pacific R. R. Co. Upon appeal the Commissioner of the General Land Office reversed said decision, and ordered the register and receiver to take further evidence on behalf of the appellants; that further evidence was thereupon taken, and in November, 1890, the register and receiver reversed their decision and awarded the said lot to the heirs of said Enos J. Rogers; that upon appeal to the Commissioner of the General Land Office said Commissioner awarded to said appellant Manuel S. De Cambra one-half of all the land and premises described in the complaint; that upon appeal to the Secretary of the Interior a decision was therein rendered in favor of the respondents Hanna Rogers and Frank J. Rogers, as the heirs of said Enos J. Rogers, deceased, upon which decision of the Secretary of the Interior a patent was subsequently issued. But it is alleged in the said cross-complaint that the appeal therein taken by the respondents was not within time; and said defendant in his cross-complaint further, 'upon and according to his information and belief, charges and alleges the truth and the fact to be (without any intention whatever to offer or to mean any sort of disrespect to the said Secretary of the Interior, Honorable Hoke Smith) that he never read a word of the evidence submitted to him, said Secretary, on said appeal, by the plaintiff in this cross-complaint, nor upon said appeal of said Hanna Rogers and Frank J. Rogers, but that subordinates, to wit: clerks employed by the Government of the United States in the said Department of the Interior, constructed on the said 9th day of October, 1894, on said two appeals the said decision therein, and procured the said Secretary, Honorable Hoke Smith, merely to put and sign his name to it, which he did without reading, studying, weighing or considering the nature of the said evidence so taken before the said register and receiver, and submitted to them by the said Manuel S. De Cambra and the said Hanna Rogers, as aforesaid, all of which

was transmitted to him, the said Secretary, for consideration, by the said register and receiver and Commissioner of the General Land Office, as, by the laws of the United States and rules of said Interior Department, they were bound to do.'

59 A cross-complaint very like the one here was considered in Grant *vs.* Oliver, 91 Cal., 158. In that case the court say: 'It is alleged that the name of Thomas was fraudulently used for the benefit of one Benson, and that the Commissioner of the General Land Office and the Secretary of the Interior, in violation of the legal and equitable claim of the defendant, neglected to read, examine or weigh the evidence taken before them on appeal from the decision of the register and receiver awarding the land to Thomas, and, without an examination of the record, signed and filed written opinions adverse to the claim of defendant, which had been compiled and fabricated by clerks and subordinates.' In commenting upon said pleading in that case the court say: 'There is no merit in the cross-complaint, and the plaintiff's demurrer to the same was properly sustained. There is nothing in the cross-complaint which takes the case out of the general rule that the action of the Land Department, acting within the scope of its authority, is binding. The land in controversy was within the jurisdiction of the land officers; the merits of the defendant's claim were presented to the Commissioner of the General Land Office on appeal from the decision of the register and receiver awarding the lands to Thomas, and to the Secretary of the Interior on appeal from the decision of the Commissioner, and both of those officers decided adversely to the claim.' The opinion of this court upon that cross-complaint and its characterization of the statements, or rather assumptions, therein contained is as follows: 'The allegations of the cross-complaint with respect to the conduct of the officers of the Land Department are so absurd that we do not deem it necessary to notice them. If they were true, and could be proved, the defendant would not be entitled to the relief he claims in this action.'

The cross-complaint in this case is entitled to no other or better consideration. The boards and officers referred to in the cross-complaint, before whom the respective rights of the parties were submitted and decided, are special tribunals constituted by act of Congress for the disposal of the public lands, and their decision within their jurisdiction has the force and effect of the judgment of a court. This has been so repeatedly determined by the Supreme Court of the United States, aside from the various decisions in this and other States, that it would be a waste of time to refer to them. In Steel *vs.* Smelting Co., 106 U. S., 447, the United States Supreme Court says: 'We have so often had occasion to speak of the Land Department, the object of its creation, and the powers it possesses in the alienation by patent of portions of the public lands, that it creates an unpleasant surprise to find that counsel in discussing the effect to be given to the action of that department, overlook our decisions on the subject. That department, as we have repeatedly said, was established to supervise the various proceedings whereby a conveyance of

the title from the United States to portions of the public domain is obtained and to see that the requirements of different acts of Congress are fully complied with. Necessarily, therefore, it must consider and pass upon the qualifications of the applicant, the acts he has performed to secure the title, the nature of the land, and whether it is of the class which is open to sale. Its judgment upon these matters is that of a special tribunal, and is unassailable except by direct proceedings for its annulment or limitation. Such
60 has been the uniform language of this court in repeated decisions.'

Being judicial in character, the acts of such boards and officers cannot be delegated. The law presumes they discharge their duties (C. C. P., sec. 1963, subs. 15–16); and this presumption cannot be overcome by anything contained in the cross-complaint, being loose statements founded not upon facts, but upon information and belief merely.

The parties to the action, as shown by the cross-complaint, are the same as the parties to the proceeding before the United States Land Department; the controversy that was heard and determined there is the same that is sought to be again litigated and determined here. Under well-established rules of law the judgment rendered in the former proceeding is conclusive of the rights of the parties here. C. C. P., sec. 1903. And it is not a case where equity will decree the holder of the legal title as trustee for appellant.

The demurrer to the cross-complaint was properly sustained. The order sustaining the demurrer, and the judgment for the plaintiffs, are affirmed."

Upon further consideration of the matter we are satisfied with that opinion, and adopt the same and the order therein made as the opinion and order of the court in banc.

Judgment and order appealed from affirmed.

VAN DYKE, *J.*

We concur:

GAROUTTE, *J.*
McFARLAND, *J.*
HARRISON, *J.*

I dissent:

BEATTY, *C. J.*

61 *Copy of Judgment.*

In the Supreme Court of the State of California.

ROGERS ET AL. vs. DE CAMBRA ET AL. } S. F., 1271.

Judgment and order affirmed.

VAN DYKE, *J.*

We concur:
GAROUTTE, *J.*
McFARLAND, *J.*
HARRISON, *J.*

I dissent.
BEATTY, *C. J.*

62 In the Supreme Court of the State of California.

HANNAH ROGERS and FRANK J. ROGERS, Plaintiffs, vs. MANUEL S. DE CAMBRA ET AL., Defendants. } S. F., No. 1271.

Petition for the Writ of Error.

To the Honorable W. H. Beatty, chief justice of the supreme court of the State of California:

Your petitioner, Manuel S. De Cambra, one of the defendants in the above-entitled action, most respectfully shows unto your honor, that this defendant is one of the defendants in said action of Hannah Rogers and Frank J. Rogers, plaintiffs *vs.* Manuel S. De Cambra and others — were and are the defendants in the superior court of the county of Alameda, State of California. That the complaint in said action was filed in the superior court of the county of Alameda on the 28th day of April, A. D. 1897. That your petitioner, Manuel S. De Cambra, and Francisca De Cambra, his wife duly appeared in said action and filed, and served their separate answers therein on the 27th day of May, 1897. That said action is at law in ejectment, and the title of the plaintiffs is alleged to be founded upon a patent of the United States issued to one Enos J. Rogers on the second day of June, 1896, he the said Enos. J. Rogers having been dead for many years before the date or issuance of said letters patent. That your petitioner claimed under the laws of the United States and more particularly under the provisions of chapter 4 of title XXXII of the Revised Statutes of the United States; and under the provisions
63 of the XIV amendment to the Constitution of the United States, a prior, legal, and equitable title to the land described in the complaint in said action to any set up thereto by said Enos J. Rogers, or Hannah Rogers, or Frank J. Rogers to wit, to the lots numbered three and four, and the east half of the southwest quarter

of section thirty-one, in township one, south of range two, west of the Mount Diablo base, and meridian according to the United States Government survey thereof, under the said laws and Constitution of the United States. Your petitioner, Manuel S. De Cambra further states, and shows unto your honor, that at the same time that he filed and served his answer in said action in the superior court of Alameda county on the 25th day of May, 1897, your petitioner filed, and served a cross-complaint in equity in said action wherein he complained against the said Hannah Rogers, and Frank J. Rogers; and therein alleged that in the year 1867, your petitioner, Manuel S. De Cambra, bought for a large sum of money from one Hewett Steele the premises described in the complaint, with other adjoining land, not exceeding in all four hundred and fifty acres; that the same was then enclosed by substantial fences, and well-known exterior boundaries, and then and there entered into the actual, quiet, and peaceable possession of said premises, and has ever since that time continuously resided upon said premises with his wife and family; that he then was a citizen of the United States, and the head of a family, which consisted of himself, and his wife, and afterward their son. That your petitioner alleged further in said cross-complaint in equity, that he fully complied with all the requirements of said laws of the United States, fully specifying such acts therein, and that he claimed, and fully relied upon and exercised his privilege and authority under the said Revised Statutes of the United States to settle upon, use, cultivate, improve and reside
64 upon said lots three and four, and the east half of the southwest quarter of said section 31, in township one, south of range two, west of Mount Diablo base and meridian, and to have a preference pre-emption right to purchase the same from the United States whenever the United States were ready to sell the same. That it is in said cross-complaint allege-, and it is the truth, that your petitioner was at all times, and has been, and is yet, and shall continue to be, ready and willing to pay to the United States, the legal and proper purchase price of said land, with all the proper fees, costs, and charges in and about the making such sale, and that by the false and fraudulent acts of the said Enos J. Rogers, in falsely stating that when your petitioner went to the proper United States land office to file and cause to be recorded his notice of his pre-emption claim for said lots three and four, and the east half of the southwest quarter of section thirty-one, in township and range aforesaid, he being unable to read or write, he was compelled to rely upon said Enos J. Rogers, who could read and write, and who was then the brother-in-law of your petitioner, to prepare your petitioner's said pre-emption notice for your petitioner, he the said Enos J. Rogers, knowingly, wilfully, corruptly, and fraudulently, inserted in said pre-emption notice the northeast quarter of said section thirty-one in said township and range, instead of the said lots three, and four, and east half of southwest quarter of said section thirty-one, in township, and range aforesaid. That by the said fraud perpetrated upon your petitioner by said Enos J. Rogers, the land officers, by misconstruction of the evidence, erroneously and

against the better rights of your petitioner refused to give him a patent for said lots three and four, and east half of said section thirty-one, aforesaid, but awarded said land to said Enos J. Rogers who had wrongfully, unjustly and fraudulently filed his notice of pre-emption thereof. That many other facts to the same
65 tenor and effect are set forth in the said cross-complaint of your petitioner. That to the said cross-complaint, the same plaintiffs interposed a general demurrer upon the ground "that said cross-complaint does not state facts sufficient to constitute a defense to the complaint of the plaintiffs herein." That the said superior court sustained said demurrer on the 14th day of June, 1897, to which ruling and decision your petitioner then and there excepted, and thereafter upon trial had on the law side of the case rendered judgment on the 22nd day of September, A. D. 1897. That on the 5th day of October 1897, your petitioner and his wife Francisca De Cambra served, filed and caused to be settled their bill of exceptions therein, and on that day to wit, October 5th, 1897, served and filed their notice of appeal in said cause, in the said superior court to the supreme court of California, and on said appeal gave and filed therein an undertaking in due form of law in the sum of $300.00; and a further, and supersedeas undertaking therein in the sum of one thousand dollars, as agreed upon by the attorneys for the said parties. That thereafter and on the 11th day of January, 1898, the said appellants, Manuel S. De Cambra and Francisca De Cambra, filed in the supreme court, and served in due time their printed transcript on appeal therein. That on the fourth day of April, A. D. 1900, the supreme court in the honorable department one thereof affirmed the judgment of the superior court and the order thereof sustaining the said general demurrer to said cross-complaint in equity. That afterward and on the 21st day of April, 1900, your petitioner, Manuel S. De Cambra, and Francisca De Cambra, his wife, filed their petition in the honorable, the supreme court, wherein they prayed that said cause be hear-, and decided by the court in bank. That the court on the fourth day of May, 1900, granted said petition. That on the 14th day of August, 1900, said cause was argued, and submitted to the court in bank for its de-
66 cision. That on the 30th day of April, 1901, four of the honorable the justices, rendered a decision therein adopting therein the said decision that had been promulgated therein on the fourth day of April, 1900, as aforesaid. Your petitioner further respectfully shows unto your honor, that in said suit, and action of Hannah Rogers, and Frank J. Rogers, the plaintiffs therein, *vs.* Manuel S. De Cambra and Francisca De Cambra, his wife, and others, as defendants therein, your petitioner, Manuel S. De Cambra, in said suit, and action, specially claimed, title, right, privilege, immunity, and authority exercised under the laws of the United States and particularly, and specially made under the provisions of chapter IV, title XXXII of the Revised Statutes of the United States, granting rights of pre-emption to public lands of the United States; and under the provisions of the XIV amendment to the Constitution of the United States; and by the proceedings in said suit, and action,

and the final judgment and decree of the honorable, the supreme court, therein was drawn in question, necessarily involved, and passed upon the validity of a statute of and authority exercised under the United States where a title, right, privilege, and immunity was specially claimed by your petitioner, Manuel S. De Cambra, one of the defendants in the said action of Hannah Rogers and Frank J. Rogers, plaintiffs *vs.* Manuel S. De Cambra and other defendants, and the decision of the majority of the justices of the supreme court which rendered its decision on the thirtieth day of April, 1901, was and is against the title, right, privilege, and immunity specially pleaded, set forth and claimed by your petitioner, Manuel S. De Cambra, the plaintiffs, in the said cross-complaint, filed and served as aforesaid, under the said Revised Statutes of the United States and the said amendment to the Constitution of the United States. Your petitioner, the plaintiff, in said cross-complaint in equity, Manuel S. De Cambra, being dissatisfied with the said judgment
67 order, and decree made by the superior court in this suit, and action and with the judgment, order and decree of the honorable, the supreme court affirming the judgment, and order appealed from, made in the said superior court and feeling aggrieved thereby, most respectfully pray that he be allowed to prosecute a writ of error herein to the Supreme Court of the United States in pursuance of the laws of the United States in that behalf made and provided.

Most respectfully,

B. B. NEWMAN,
Att'y for Petitioner.

B. B. NEWMAN,
Counsel for Petitioner.

The foregoing petition is allowed; a supersedeas bond in the sum of one thousand dollars to be filed by the petitioner, Manuel S. De Cambra.

Dated, May 29th, A. D. 1901.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

68 [Endorsed:] S. F. 1271. In the supreme court of the State of California. Hannah Rogers, and Frank J. Rogers, plaintiffs, *vs.* Manuel S. De Cambra, *et al.*, defendants. Petition for writ of error. Filed, May 29th, 1901. Geo. W. Root, clerk. By W. E. Boody, deputy. B. B. Newman, att'y and counselor for pet. # 604 Merchant St. S. F.

69 *Bond.*

In the Supreme Court of the United States of America.

MANUEL S. DE CAMBRA, Plaintiff in Error,
vs.
HANNAH ROGERS and FRANK J. ROGERS, Defendants in Error.

Know all men by these presents that we James L. Hicks, and John J. Cooney, both of the city and county of San Francisco, State of California, are held, and firmly bound unto the said defendants in error, Hannah Rogers, and Frank J. Rogers in the sum of one thousand dollars in the lawful money of the United States to be paid to said Hannah Rogers, and Frank J. Rogers, their executors or administrators, to which payment well, and truly to be made we bind ourselves, and each of us jointly, and severally, and our and each of our heirs executors, and administrators firmly by these presents.

Sealed with our seals.

Dated this 29th day of May, A. D. 1901.

Whereas the above bounden and named Manuel S. De Cambra has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered by the supreme court of the State of California in the cause entitled Hannah Rogers, and Frank J. Rogers, plaintiffs, *versus* Manuel S. De Cambra, and others.

Now, therefore, the condition of this obligation is such that
70 if the above-named, Manuel S. De Cambra shall prosecute his said writ of error to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

Dated at San Francisco this — day of May, A. D. 1901.

Witness our hands and seals.

J. L. HICKS. [s. s.]
JOHN J. COONEY. [s. s.]

UNITED STATES OF AMERICA,
District of California, City of San Francisco, } *ss:*
County of San Francisco,

James L. Hicks, and John J. Cooney, being duly sworn, each for himself, deposes and says that he is a resident and freeholder in the district and State of California, and is worth the sum of two thousand dollars in the lawful money of the United States of America, over and above all of his debts, and liabilities in property exempt from execution.

J. L. HICKS.
JOHN J. COONEY.

Subscribed and sworn to before me this 29th day of May, 1901.
GEO. W. ROOT, *Clerk,*
By A. E. HORNLEIN, *Deputy.*

The foregoing bond is hereby approved.
May 29th, 1901.

W. H. BEATTY,
Chief Justice of the Supreme Court of California.

71 (Endorsed:) S. F. 1271. E. The form of the within bond, and the sufficiency of the sureties thereon, are hereby approved. Dated May 29th, A. D. 1901. —— ——, chief justice of the supreme court, of the State of California. Filed May 29th, 1901. Geo. W. Root, clerk. By A. E. Hornlein, deputy.

72 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to Hannah Rogers and Frank J. Rogers, defendants in error, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 26th day of July, A. D. 1901, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, wherein Manuel S. De Cambra is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. H. Beatty chief justice of the supreme court of the State of California this 29th day of May A. D. 1901 and of the Independence of the United States, the one hundred and —.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

72½ Service of within citation, by copy, admitted this 31st day of May A. D. 1901.

J. E. McELROY,
C. C. HAMILTON,
Attorneys for Defendants in Error.

[Endorsed:] Original. S. F. 1271. In the Supreme Court of the United States. Manuel S. De Cambra plaintiff in error *vs.* Hannah Rogers and Frank J. Rogers defendants in error. Citation. Filed May 29th A. D. 1901. Filed May 31 1901. Geo. W. Root, clerk, by W. E. Boody, deputy.

73 In the Supreme Court of the United States.

Late in the Supreme Court of the State of California.

MANUEL S. DE CAMBRA, Plaintiff in Error,
vs.
HANNAH J. ROGERS and FRANK J. ROGERS, Defendants in Error.

STATE OF CALIFORNIA,
City and County of San Francisco,
in the District of California.

Thomas O'Donnell, being duly sworn deposes and says that he is a citizen of the United States over the age of twenty-one years; that on the fourth day of June, A. D. 1901, deponent served a true copy of the original citation issued out of the supreme court of the State of California in the above-entitled action on the 29th day of May, 1901, by delivering to, and leaving with said Hannah –. Rogers, and Frank J. Rogers, the defendants in error, and to each of them a true copy thereof in Contra Costa county in the said district and State of California. That deponent is and has been well acquainted with the said Hannah Rogers and Frank J. Rogers and that deponent has no interest whatever in the subject-matter of said action.

THOMAS O'DONNELL.

Subscribed and sworn to before me, this sixth day of June, A. D. 1901.

[Seal of U. S. Cir. Court, N. District.]

W. B. BRAIZLEY,
Deputy Clerk U. S. Circuit Court,
Northern District of California.

74 In the Supreme Court of the State of California.

HANNAH ROGERS and FRANK J. ROGERS, Plaintiff- and Respondent-,
vs.
MANUEL S. DE CAMBRA ET AL., Defendant- and Appellant-.
No. S. F., 1271.

I, Geo. W. Root, clerk of the supreme court, of the State of California do hereby certify that the proceeding and annexed is the original writ of error and citation and a true and correct copy of transcript on appeal, opinion of April 4th, 1900, petition for rehearing, court order granting rehearing in bank, opinion of April 30th, 1901, judgment, petition for writ of error, affidavit of service of citation and bond, of the above-entitled cause, comprising pages one to 73 as shown by the records of my office.

Witness my hand and the seal of the court, this 10th day of June A. D. 1901.

[Seal Supreme Court of California.]

GEO. W. ROOT, *Clerk*,
By W. E. BOODY, *Deputy*.

Endorsed on cover: File No. 18,273. California supreme court. Term No. 170. Manuel S. De Cambra, plaintiff in error, *vs.* Hannah Rogers & Frank J. Rogers. Filed October 1st, 1901.

FILE COPY

Office Supreme Court U. S.
FILED
DEC 18 1902
JAMES H. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES.

MANUEL S. DE CAMBRA,
Plaintiff in Error,
vs.
HANNAH ROGERS AND
FRANK J. ROGERS,
Defendants in Error.

October Term,
A. D. 1902.
No. 170.

In Error to the Supreme Court of the State of California.

BRIEF FOR PLAINTIFF IN ERROR.

J. C. BATES,
Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 170.

MANUEL S. DE CAMBRA, Plaintiff in Error,

vs.

HANNAH ROGERS AND FRANK J. ROGERS, Defendants in Error.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This action was commenced in the Superior Court of the County of Alameda, California, in ejectment, by Hannah Rogers and Frank J. Rogers as plaintiffs (defendants in error) on the 28th of April, A. D. 1897, against Manuel S. De Cambra, the plaintiff in error, and others, as defendants, to recover the possession of 176 $\frac{00}{100}$ acres of land situated in that county.

Manuel S. De Cambra, as one of the defendants in the action, now the plaintiff in error, appeared in the action, and denied the allegations of the complaint, and at the same time filed with his answer and served upon the plaintiffs at law, now the defendants in error, his cross-complaint in equity, duly verified. It begins at the 9th line in folio 7, page 5, and ends at folio 18½, page 14, of the printed record now before this Court.

The cross-complaint in equity alleges that Manuel S. De Cambria bought 450 acres of land, embracing the land in controversy, in 1867, for a large sum of money, from Hewett Steel, it then being a part of the Mexican grant, "Laguna de los palos colorados," duly confirmed by boundaries, but unsurveyed and unpatented. That De Cambria went into the actual possession of the 450 acres in 1867, and so continued down to the present day of that part of it designated as lots 3 and 4, and east half of southwest quarter of Section 31 in Congressional Township Number One, south of range two, west of the Mount Diablo base and meridian line. (Please see diagram of the land in controversy between pages 26 and 27 of the printed record now before this Court.)

That De Cambra sold to his brother-in-law, Enos J. Rogers, the husband of Hannah, and the father of Frank J. Rogers, an undivided one-half interest in the 450 acres, in 1871, with the express agreemcnt between them that if the same should become public lands of the United States, then and in that event Rogers should take as his pre-emption claim under the laws of the United States the northwest quarter of said Section 31, and De Cambra should claim the southwest quarter of said Section 31. (Please see last line in folio 8, page 5, and down to the end of that folio, and all of page 6, of the printed record, as embracing the last above statement.)

That on July 30th, 1878, the plat of the township was filed in the United States Land Office at San Francisco. That after the plat was filed, Rogers and De Cambra went to the land office to file their pre-emption declaratory statements. That De Cnmbra requested Rogers to prepare his declaratory statement to be filed for lots 3 and 4, and east half of the southwest quarter of Section 31, De Cambra not being able to write or read. That said Rogers, instead of doing as directed by De Cambra, intentionally, wilfully, knowingly, corruptly and fraudulently inserted in the said Manuel S. De Cambra's notice and claim of pre-emption, to which he, Manuel S. De Cambra, put his cross, or mark, the northeast quarter of said Section 31, upon which he, Manuel S. De Cambra, had not then and never had a dwelling house or other improvements whatever, and only a small part of which was then in his possession, and three-fourths of which was utterly worthless, and tendered said pre-emption notice and claim in the name of Manuel De Cambra in said land office to be filed as a record therein. That said Rogers then and there at said time, in the United States Land Office, prepared and signed his name intentionally, knowingly, wilfully and fraudulently to his pre-emption notice, wherein he claimed lots 3 and 4 and the east half of the southwest quarter of said Section 31, and then and there tendered the same to the Register and Receiver, to be filed by them as a record in said land office.

That De Cambra did not discover the fraud that Rogers had perpetrated upon him until the 29th day of December, 1883. (Please see folio 8½, page 6, down to the 8th line in folio 10, page 7, of the printed record, for the above statements.)

That De Cambra, on the 29th day of December, 1883,

upon the discovery of the fraud that Rogers had perpetrated upon him, filed his pre-emption notice in the land office for lots 3 and 4 and east half of the southwest quarter of said Section 31, and the same is "Exhibit A," attached to and made a part of the cross-complaint; and that exhibit is shown in folios 17½ and 18, page 13, of the printed record. (Please see for the foregoing statement, folio 10, page 7, of the printed record.)

That Manuel S. De Cambra, the plaintiff in error, on the 14th of April, 1884, and succeeding days, produced competent evidence before the Register and Receiver to prove his right to enter said lots 3 and 4 and east half of southwest quarter of Section 31. Under the laws of the United States, and to obtain a patent therefor, but, that by misconstruction of the evidence and the law applicable thereto, the Register and Receiver denied the claim and right of De Cambra, from which he appealed to the Commissioner of the General Land Office, who, by his wrongful decision and in violation of De Cambra's rights under the provisions of Chapter 4 of Title XXXII of the Revised Statutes of the United States, only awarded to him one undivided one-half part of lot 3 and of east half of southwest quarter of Section 31, and awarded all of lot 4 of said quarter section to one Fontes. (Please see for the above statement all of pages 8 and 9 of the printed record.)

That the plaintiff in error, De Cambra, appealed from the decision of the Commissioner to the Secretary of the Interior from that part of the Commissioner's decision, which failed to award to him all the land he claimed as set forth in his pre-emption notice; but Hannah Rogers, pretending to represent the so-called heirs-at-law of Enos J. Rogers, did not appeal to the Secretary of the Interior until long after the right to take an appeal had expired. (Please see the last six lines of page 8, down to and including the first five lines of folio 14, page 10, of the printed record for the above statement.)

That upon the said wrongful appeal so taken by said Hannah Rogers and Frank J. Rogers to the Secretary of the Interior, a decision was thereafter, on the 9th day of October, 1894, rendered therein, purporting to be the decision of the Secretary of the Interior, in but which the plaintiff in the cross-complaint, upon and according to his information and belief, charges and alleges the truth, and the fact to be (without any intention whatever to offer, or to mean

any sort of disrespect to the Secretary of the Interior, Honorable Hoke Smith), that he never read a word of the evidence submitted to him on said appeal by the plaintiff in the cross-complaint, the plaintiff in error, but that subordinates, clerks employed in said department, constructed, on said 9th day of October, 1894, on said two appeals, the said decision therein, and procured the Secretary, Honorable Hoke Smito, merely to put and sign his name to it, which he did without reading, studying, weighing or considering any of said evidence so taken before the Register and Receiver, and submitted to them by said Manuel S. De Cambra and Hannah Rogers, all of which was transmitted to him for consideration and decision by the Register and Receiver, and by the Commissioner of the General Land Office. That said decision awarded all the tracts of land in controversy to the heirs of Enos J. Rogers. That upon that pretended decision a patent of the United States wrongfully and in violation of the laws of the United States, and the vested rights of the plaintiff in the cross-complaint, and plaintiff in error, were issued under the seal of the General Land Office in the month of June, 1896, and delivered to Hannah Rogers and Frank J. Rogers as the alleged heirs of Enos J. Rogers. De Cambra alleges in the cross-complaint that by reason of the failure of the Secretary of the Interior to personally examine and consider the evidence submitted to him on the appeal by Manuel S. De Cambra, nor to render any personal decision, judgment or decree thereon on said appeal, or otherwise. Manuel S. De Cambra, the plaintiff in error, has been and is deprived of his right, title, interest and property in said lots of land of the value of $2,500.00 without due process of law, and contrary to and in violation of the laws of the United States, and especially and particularly against and contrary to the XIV Amendment to the Constitution of the United States. And the plaintiff in the cross.complaint, who is also the plaintiff in error, specially plead and set up therein the laws of the United States, as guaranteeing to him protection and safety in the prosecution and assertion of his pre-emption claim and right under the laws of the United States. And further specially pleads, asserts and contends that his right and title to said tracts and lots of land has been taken away from him by the wrongful acts of the United States Land Office, and wrongfully and unlawfully given over by the letters patent to Hannah Rogers and Frank J. Rogers, the pretended heirs of Enos J. Rogers, in

violation of and contrary to the spirit, intent and meaning of the XIV Amendment of the Constitution of the United States of America, under which said De Cambra claims the protection of his rights and claims in and to said tracts of land.

That the plaintiff in the cross-complaint offers to pay into Court for Hannah Rogers the sum she paid the land officers for said tracts of land, and all other costs and charges. The prayer of the cross-complaint is: that it be adjudged and decreed that the defendants in the cross-complaint, Hannah Rogers and Frank J. Rogers, as the alleged heirs of Enos J. Rogers, hold the legal title to the premises described, as trustees for the plaintiff, in the cross-complaint; that it be adjudged and decreed that the patent be cancelled and annulled, as having been improvidently issued, and against the laws of the United States, and against the XIV Amendment of the Constitution of the United States of America; and prays for such other and further relief in the premises as may be just, and as to equity belongs. (Please see for the foregoing statement from folio 14, page 10, to and including folio 18, page 13, of the printed record, now before this Court.)

That to the cross-bill filed in the trial Court by Manuel S. De Cambra, which was duly verified, Hannah Rogers and Frank J. Rogers, by their attorney, demurred, "and for grounds of demurrer specifies and assigns: That the said cross-complaint does not state facts sufficient to constitute a defense to the complaint of the plaintiffs herein." (Please see the middle part of page 36 of the printed record as coutaining the demurrer to the cross-bill in equity.)

The trial Court sustained that demurrer. (Please see the last nine lines of page 36 and the first four lines of page 37 of the printed record for the order sustaining the demurrer.)

The plaintiff in the bill, Manuel S. De Cambra, excepted to the order of the trial Court wherein it sustained the demurrer to the cross-bill. (Please see lines two, three and four at the top of page 37 of the printed record for that exception.)

The cross-bill filed by De Cambra begins at the ninth line on page 5 and ends near the middle of page 14 of the printed record now before the Court.

The demurrer to the cross-bill having been sustained and an exception taken to the order sustaining it, the Superior

Court of Alameda County heard the evidence on the law side of the case and rendered judgment in favor of Hannah and Frank J. Rogers, and against Manuel S. De Cambra and Francisca De Cambra, his wife, from which they appealed to the highest court of law of the State of California, the Supreme Court of the State. The record on that appeal was upon the judgment-roll, to which was attached a bill of exceptions taken to the rulings and decisions of the trial Court as provided by Section 950 of the Code of Civil Procedure of the State of California, which declares that "on an appeal from a final judgment the appellant must furnish the Court with a copy of the notice of appeal, of the judgment-roll and of any bill of exceptions in the case upon which the appellant relies." The bill of exceptions attached to the judgment-roll on that appeal begins with the words "Bill of Exceptions" in the fifth line from the top of page 18 and ends at the fifth line from the top of page 22 of the printed record now before this Court.

That upon the appeal from the judgment and order sustaining the demurrer to the complaint in equity by the Superior Court to the Supreme Court of California, Manuel S. De Cambra, plaintiff in error, relied for a reversal of the judgment appealed from upon four exceptions taken to the decisions of the trial Court, namely:

1st. That the Court erred in sustaining the demurrer of Hannah and Frank J. Rogers to the cross-complaint in equity filed and served by Manuel S. De Cambra with his answer to the complaint at law. That exception is found in "minute order" in the second paragraph from the top of page 15 of the printed record before this Court; and the

2nd exception to the ruling of the trial Court admitting in evidence the patent to E. J. Rogers, it appearing from the evidence of Hannah Rogers, one of the plaintiffs in the trial Court, "that said Enos J. Rogers died intestate in the year 1882, and no letters of administration applied for or issued, and left no will," the exception being upon the ground that it was proven that Enos J. Rogers had died more than thirteen years before said patent was issued, and therefore that said paper writing was irrelevant, incompetent and immaterial evidence. (Please see the last half of page 18 of the printed record, from which the last above statement is made.)

3rd. Upon the ground of the insufficiency of the evidence to sustain the decision and final judgment of the trial

Court; and

4th. That the conclusions of law drawn from the evidence by the trial Court were not sustained by the evidence. (Please see the last eight lines of page 20 and all of page 21 of the printed record now before this Court, as embracing the last above statement.)

That upon that appeal the Supreme Court of California, in Department No. 1, consisting of three of the seven Justices, and upon rehearing before the seven Justices, four affirmed the rulings and judgment of the trial Court, Mr. Chief Justice W. H. Beatty dissenting. and two of the Justices remaining silent. That final judgment of the Supreme Court begins with letters, figures and words "S. F. No. 1271. In Bank. April 30th, 1901," near the top of page 43 of the printed record, now before this Court, and ends with "Beatty, C. J." at the end of the first paragraph of page 47 of the same record. It is also reported in Vol. 132, Cal. Reports, pages 502 to 505.

That to reverse that final judgment of the Supreme Court of California, Manuel S. De Cambra prayed by petition that the Chief Justice of the Supreme Court of California allow the writ of error, which had been issued from the Honorable, the Supreme Court of the United States, on the 29th day of May, A. D. 1901, which was granted by the Chief Justice of the Supreme Court of the State of California. (Please see for the allowance of the writ of error the eight last lines on page 1 of the printed record now before this Court and the twelve last lines on page 50 of said record.)

That a supersedeas bond was filed on the allowance of the writ of error, fixed by the Chief Justice of the Supreme Court of California, and approved by him on the 29th day of May, 1901, as appears on pages 51 and the first four lines on page 52 of the printed record now before this Court.

That citation was duly issued to Hannah Rogers and Frank J. Rogers, the defendants in error, and duly served upon them and upon their attorney on the 6th day of June, A. D. 1901, is shown by the printed record, pages 52 and 53, now before this Court.

That the record, from which the printed record, now before this Court, was taken, is duly certified to, is shown by the last fourteen lines on page 53 and top of page 54 of said printed record.

Assignment of Errors. (Please see page 2 and sixteen first lines of page 3 of printed record now before this Court.

I. Assignment of Errors.

The plaintiff in error, Manuel S. De Cambra, assigns for error and urges and contends that the Supreme Court of California erred, to the great detriment of plaintiff in error, in the rendition of its final judgment in deciding that the cross-complaint of the plaintiff in error did not state facts sufficient to constitute a cause of action, nor a defense to the action at law, wherein the defendants in error were the plaintiffs at law in the trial Court, and Manuel S. De Cambra. the plaintiff in error, was the defendant at law and plaintiff in the cross-complaint, and in the rendition of its final judgment, that the demurrer interposed by the defendants in error to the cross-complaint was properly sustained, and therein erred in affirming the order sustaining said demurrer.

II. Assignment of Errors.

That the Supreme Court of California erred in the rendition of its final judgment of said cause, to the great injury and detriment of the plaintiff in error, and to the destruction of his rights to the tracts of land in controversy which he claimed altogether under the laws of the United States and the XIV Amendment to the Constitution of the United States, by founding its said final judgment upon the statute laws of California, and exclusively upon the decision of its own Court, instead of the laws of the United States, the title to said lands in controversy having emanated from the United States.

III. Assignment of Errors.

That in the record and proceedings as aforesaid. there is manifest error, to the great prejudice of plaintiff in error, to wit: That the declaration aforesaid of the defendants in error and the matters therein contained are not sufficient in law for the said Hannah Rogers and the said Frank J. Rogers, defendants in error, to have or maintain their action aforesaid against the said Manuel S. De Cambra, the plaintiff in error, because all the matters and things in the cross-complaint in equity, file, and served with his answer, by Manuel S. De Cambra, plaintiff in error, were, by the demurrer of the defendants in error, admitted to be true.

IV. Assignment of Errors.

That by the record aforesaid it appears that the final judg-

ment aforesaid, given and made in said cause, was for said Hannah Rogers and Frank J. Rogers, the defendants in error, and against the said Manuel S. De Cambra, the plaintiff in error, where, as by the laws of the United States, and particularly by the provisions of Chapter IV of Title XXXII of the Revised Statutes of the United States, under which the plaintiff in error claims, and by the rules and principles of equity the said final judgment ought to have been given for the said Manuel S. De Cambra, against Hannah Rogers and Frank J. Rogers, because the said cross-complaint in equity filed and served by the plaintiff in error was sufficient law and equity to entitle the said Manuel S. De Cambra to final judgment in his favor.

V. Assignment of Errors.

Because it further appears from the record in this cause now in this Court that the Supreme Court of California erred in the rendition of its final judgment in not holding and deciding that the cross-complaint in equity filed by the plaintiff in error was sufficient in law and equity to entitle the plaintiff in error to the relief therein prayed. And the said Manuel S. De Cambra, the plaintiff in error, prays that the final judgment of the Supreme Court of California aforesaid be reversed, annulled and for naught held, and that he may be restored to all thinge which he has lost by reason of the said erroneous final judgment aforesaid.

Argument.

The plaintiff in error, by his cross-complaint in equity, set up that he claims right and title to the land in controversy under the provisions of Chapter IV of Title XXXII, which includes Section 2259 of the Revised Statutes of the United States and under the XIV Amendment to the Constitution of the United States. (Please see the six first lines of page 10, the middle of folio 16½, page 12, and all of "Exhibit A" in page 13 of the printed record, now before this Court, for the assertion by the plaintiff in error of his right and title to the land in controversy, under the laws of the United States and under the XIV Amendment to the Constitution of fhe Uuited Sfates, against which right and title so set up and claimed by the plrintiff in error the final judgment of the Supreme Court of the State of California was erroneously rendered.)

The Statute Laws of California, Section 342, of the Code

of Civil Procedure, declares: "Whenever the defendant seeks affirmative relief against any party, relating to or depending upon the contract or transaction upon which the action is brought, *or affecting the property to which the action relates, he may, in addition to his answer, file at the same time, or by leave of the Court subsequently, a cross-complaint. The cross-complaint must be served upon the parties affected thereby, and such parties may demur or answer thereto as to the original complaint.*"

In Taylor vs. McLane, 64 Cal., 513–514, the Supreme Court of California said, at page 514: * * *

"To the complaint of the plaintiff at law in ejectment, the defendant set up a cross-complaint in equity. The Code of Civil Procedure, Section 442, authorizes defendant to file a cross-complaint whenever he seeks affirmative relief affecting the property to which the action relates."

The same principle was announced by the same Court in Colton L. & W. Co. vs. Reynolds, 57 Cal., 592–593, and in Winter vs. McMillan, 87 Cal., 264–225–266.

The Supreme Court of California erred in the rendition of its final judgment wherein it decided that the demurrer of the defendants to the cross-complaint of the plaintiff in error was properly sustained, and therein overruled the decision of the Supreme Court of California rendered in the case of Bird vs. Wilcox et al., 45 Cal., 686–889. The Supreme Court in that case decided it according to the laws of the United States and the decisions of the Supreme Court of the United States. Its decision, on page 689, is as follows:

"By the Court—We are of opinion that the complaint is sufficient against the general demurrer interposed by the defendants. (Johnson vs. Towsley, 13 Wallace, 72.) Judgment reversed and cause remanded, with directions to overrule the demurrer."

That case involved a United States patent for land issued to the defendants upon a contest in the Land Department, wherein the patent was given to Wilcox, whose assignee was Vale, Bird being defeated in the Land Department, who claimed in his bill of complaint against Wilcox and his grantee, Vale, that he had been wrongfully deprived of his rights to the land by the erroneous decision of the Secretary of the Interior. But instead of following the decisions of the Supreme Court of the United States as in the above case of Bird vs. Wilcox et al., four of the Justices out of

the seven Justices of the Supreme Court of California (Mr. Chief Justice W. H. Beatty dissented) in the case of Manuel S. De Cambra, plaintiff in error, vs. Hannah Rogers and Frank J. Rogers, defendants in error, erroneously decided the cause, founding the decision upon the Statutory Laws of California, wherein, in said judgment, it declares: "The law presumes they (the land officers) discharged their duty (Code of Civil Procedure, Section 1963, Subdivisions 15–16)" * * * "under well established rules of law the judgment rendered in the former proceeding (in the Land Department) is conclusive of the rights of the parties here, Code of Civil Procedure, Section 1903." (Please see for the two last above quotations, folio 60, page 46, of the printed record now before this Court.)

In Wilcox vs. Jackson, 13 Peters, 498–517, this Court said, at page 517: "We hold the true principle to be this, that whenever the question in any Court, State or Federal, is, whether a title to land which had once been the property of the United States has passed, that question must be solved by the laws of the United States."

The demurrer of the defendants in the cross-complaint, who are also the defendants in error, to the plaintiff's cross-complaint in equity, who is also the plaintiff in error, admits all the allegations of the cross-complaint to be true, and the order sustaining it was in effect a dismissal of the cross-complaint, and was so declared by this Court in Lytle vs. State of Arkansas, 9 How, 314. The Court said, at page 331: "The Circuit Court sustained the demurrer, and in effect dismissed the bill. The cause was taken to the Supreme Court, which affirmed the decree of the Circuit Court. The demurrers admit the truth of the allegations of the bill and consequently rests on the validity of the right asserted by the complaint," and at page 333 said: "It is a well established principle that where an individual in the prosecution of a right does everytning in his power which the law requires him to do, and he fails to attain his right by the misconduct or neglect of a public officer, the law will protect him. The claim of pre-emption is not that shadowy right which by some it is considered to be. Until sanctioned by law, it has no existence as a substantive right; but when covered by the law it becomes a legal right, subject to be defeated only by a failure to perform the conditions annexed to it."

"Exhibit A," attached to and made a part of the cross-complaint of the plaintiff in error.

"Declaration and statement of pre-emption for land not subject to private entry.

"Manuel S. De Cambra, of the County of Alameda and State of California, being the head of a family and a citizen of the United States, did, on or about the 27th day of October, 1867, settle upon and improve, and has ever since claimed, occupied and improved the lots 3 and 4 and east half of southwest quarter of Section 31 in township one south, range two west, Mount Diablo Meridian, in the district of lands subject to sale at the United States Land Office at San Francisco, California, and containing one hundred and seventy-six and sixty one-hundredths ($176\frac{60}{100}$) acres, which land has not yet been offered at public sale, and thus rendered subject to private entry; and I do hereby declare my intention fo to claim said tracts of land as a pre-emption right under the provisions of the Act of Congress approved September 4th, 1841, March 3rd, 1853, and Section 2259 of the Revised Statutes of the United States.

Given under my hand this 29th day of December, A. D. 1883.

his
MANUEL S. ⋈ DE CAMBRA.
mark

Witness: B. B. Newman,
George W. Lee.

Signed in the presence of
B. B. Newman, George W. Lee.

(Endorsed.) No. 17,915. Declaratory Statement of Manuel S. De Cambra. Filed December 29th, 1883." (Please see page 13 of printed record now before this Court for said Declaratory Statement.)

Hannah Rogers, for the heirs of Enos J. Rogers, filed her declaratory statement for the same tracts of land on "January 21, 1884," which was twenty-two days after the plaintiff in error had appropriated the land by filing his declaratory statement for it. In Hannah Rogers' declaratory statement she alleges that "Enos J. Rogers" settled on the tract in controversy in "July, A. D. 1871.', But the land was claimed as a part of the Mexican grant "Laguna de los colorados" until August 8th, 1878, when, by the Secretary of

the Interior's decision, it was excluded from that grant, and for the first time became public land of the United States. In her declaratory statement Hannah Rogers declares "her intention to claim said tracts of land as a pre-emption right under the provisions of said Act of September 4th, 1841." (Please see for Hannah Rogers' declaratory statement, folio 18½, page 14, of the printed record now before this Court.)

The plaintiff in error respectfully contends that the defendants in error have no connection in law nor in equity with the land in controversy, because they attempt to found a claim to it upon "the Act of September 4th, 1841." What Act? On the 21st of January, 1884, when Hannah Rogers files her pre-emption for the heirs of Enos J. Rogers, the only law granting pre-emption rights was embraced in Chapter IV of Title XXXII of the Revised Statutes of the United States.

"Title XXXII, Chapter IV, of the Revised Statutes of the United States" declares:

"Section 2257. All lands belonging to the United States to which the Indian title has been or may hereafter be extinguished, shall be subject to the right of pre-emption under the conditions, restrictions and stipulations provided by law.

"Section 2259. Every person being the head of a family, or a widow, or single person over the age of twenty-one years of age, and a citizen of the United States, or having filed a declaration of intention to become such, as required by the naturalization laws, who has made or hereafter makes a settlement in person on the public lands subject to pre-emption, and who inhabits and improves the same, and who has erected or shall erect a dwelling house thereon, is authorized to enter with the Register of the Land Office for the district in which such land lies, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land."

Section 2260 declares who are disqualified from acquiring a right of pre-emption, to which class the plaintiff in error does not belong, as shown by his cross-complaint, as set forth on page 8 of the printed record now before this Court.

Section 2280 declares:

"Any settler on lands heretofore reserved on account of claims under French, Spanish or other grants, which have

been * * * released from other reservations, shall have the right to pre-emption in the same manner as if no reservation had existed."

The cross-complaint shows that the plaintiff in error settled upon the land in suit in 1867, but that at that time it was claimed as a part of the Mexican grant "Laguna de los palos colorados," and so continued to be up to August 8th, 1878, when upon survey it was ascertained that the land in controversy was in excess of the grant, and by order of the Secretary of the Interior excluded from that grant, at which date it became for the first time public lands of the United States and subject to dispossession under its laws; the plaintiff in error having been in the actual possession of the land in controversy since 1867, his pre-emption right attached to the land as of that date; Enos J. Rogers having no pretense of claim or settlement until 1871, as shown by the cross-complaint near the top of page 14 of the printed record now before this Court.

The plaintiff in error, by his attorney, respectfully contends that the claim set up by Hannah Rogers for the defendants in error "under the provisions of the Act of 4th of September, 1841," (please see the 14th and 15th lines from the top of page 14 of the printed record now before this Court for the claim so set up under "the provisions of the Act of 4th September, 1841,") is not founded upon any law of the United States, because the Revised Statutes, Title XXXII, Chapter IV, embraced all the laws governing pre-emption rights, from June 22, 1874, down to the repeal of Chapter IV in that Title by the Act of March 3rd, 1891, (United States Statutes at large, Vol. 26, pages 1095 to 1103, entitled "An Act to repeal timber culture laws, and for other purposes.")

Title LXXIV of the Revised Statutes of the United States, Section 5595, declares:

"The foregoing seventy-three titles embrace the Statutes of the United States, general and permanent in their nature, in force on the first day of December, one thousand eight hundred and seventy-three, as revised and consolidated by commissioners appointed under an Act of Congress, and the same shall be designated and cited as the Revised Statutes of the United States."

Section 5596 declares:

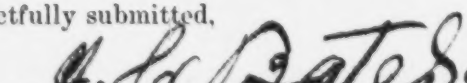
"All Acts of Congress passed prior to the said first day of December, one thousand eight hundred and seventy-three,

any portion of which is embraced in any section of said revision, are hereby repealed." * * *

Title XXXII, Chapter IV, does embrace all of the Act of September 4th, 1841, granting pre-emption rights, hence repealed, and therefore did not exist as a law of the United States on the "21st of January, 1884," when Hannah Rogers filed the declaratory statement shown in folio 46½, page 36, of the record now before this Court.

The plaintiff in error respectfully refers to, and submits the decisions of the Court in the cases of Ord vs. Brandon, 156 U. S., 537; Morrison vs. Stalnaker, 104 U. S., 213; Lytle vs. State of Arkansas, 9 How, 314; Duluth & Iron R. R. vs. Roy, 173 U. S., 587, as sustaining the contention of the plaintiff in error, that under the laws of the United States and the Fourteenth Amendment to the Constitution of the United States, under which he claims his right and title to the land in controversy, he prays for a reversal of the final judgment of the Supreme Court of California, because the printed record before this Court shows that Manuel S. De Cambra failed in nothing in complying with the laws of the United States since he bought the title of Steel in 1867 and his entry under that purchase in that year, and his continued residence thereon down to the date of this brief, with his family; and that the [redacted] fraud perpetrated upon him by Enos J. Rogers should not be rewarded by giving the land to his wife and son, to the destruction of the just claims of Manuel S. De Cambra, the plaintiff in error.

Respectfully submitted,



Attorney for Manuel S. De Cambra, the Plaintiff in Error.

Dated San Francisco, California, this 9th day of December, A. D. 1902.

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JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 170.

MANUEL S. DE CAMBRA, PLAINTIFF IN ERROR,

vs.

HANNAH ROGERS AND FRANK J. ROGERS,
DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

BRIEF FOR DEFENDANTS IN ERROR.

FRANKLIN H. MACKEY,
For Defendants in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 5580

19120

Supreme Court of the United States.

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No. 170.

MANUEL S. DE CAMBRA, PLAINTIFF IN ERROR,

vs.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

BRIEF FOR DEFENDANTS IN ERROR.

This case, the decision in which in the court below will be found reported in 132d Cal., 502, under the title of Rogers *vs.* De Cambra, is an action of ejectment brought in the superior court of the county of Alameda, California, to recover 176.60 acres of land located in said county. De Cambra (the defendant below) filed an answer and an alleged cross-complaint, set forth in the record.

A demurrer was filed to the cross-complaint which was sustained by the court, and the case then came to trial without a jury, a jury trial having been specially waived by the respective parties in open court (R., 15).

Thereupon, as stated in the record, page 16, "oral and documentary evidence was offered, produced, and heard on behalf of the plaintiffs, and the defendant having no evi. dence whatsoever, the case was submitted to the court for its decision," which in due course filed its findings of fact and conclusions of law (R., 16).

These in substance were:

1. That the plaintiffs were at the commencement of the action the owners in fee of the property described in the complaint and entitled to the possession thereof.

2. That the defendant was, at said time, wrongfully in possession of about ninety acres of said land and withheld and detained the same from the plaintiffs.

As a conclusion of law from the foregoing facts, the court found that the plaintiffs were entitled to the recovery of the land so withheld by the defendant, and judgment was rendered accordingly.

The defendant (plaintiff in error) reserved certain exceptions, to be mentioned presently, and, a new trial being refused, the case was taken by writ of error to the supreme court of California, where the judgment was affirmed, whereupon a writ of error was sued out from that court to this, and the case is now here upon the said bill of exceptions (R., 18).

I.

The exceptions are four in number. The second and third are to the effect that "the evidence is insufficient to sustain the findings of fact by the court." This court, as is well known, will not interfere with the findings of fact of the State court upon the evidence. We will therefore not discuss these exceptions (Myrick *vs.* Thompson, 99 U. S., 291, 294). "A writ of error brings up matters of law only" (Dower *vs.* Richards, 151 U. S., 163).

The real contention in the case is comprised in the first exception, viz., over the action of the court in sustaining the demurrer to the cross-complaint. The argument of counsel for plaintiff in error upon this exception may be resolved into two propositions, both of which are plainly untenable:

1. That the Land Department erred in its conclusions upon the evidence by which it awarded the land to the defendants in error. It is too well settled, however, ever to be overturned that the findings and conclusions of the officers of the Land Department are conclusive when rendered within the scope of their powers.

Shipley *vs.* Cowan, 91 U. S., 330; French *vs.* Tyan, 93 U. S., 172; Moore *vs.* Robbins, 96 U. S., 530; Lansdale *vs.* Daniels, 100 U. S., 118; Marquez *vs.* Frisbie, 101 U. S., 473; United States *vs.* Atherton, 102 U. S., 374; Quinley *vs.* Conlon, 104 U. S., 426; Smelting Co. *vs.* Kemp, 104 U. S., 647; Steel *vs.* St. Louis Smelting Co., 107 U. S., 465; Lee *vs.* Johnson, 116 U. S., 51; United States *vs.* Maxwell Co., 121 U. S., 325.

II.

The second proposition involves (with apologies to my opponent) a frivolous and inartificially framed charge, made solely upon information and belief, that the Secretary of the Interior, on the hearing of the appeal to him, "never read a word of the evidence submitted to him, * * * but that subordinates—to wit, clerks—employed by the Government of the United States in the said Department of the Interior constructed the said decision * * * and procured the said Secretary, Honorable Hoke Smith, merely to put and sign his name to it, which he did without reading, studying, weighing, or considering any of the said evidence so taken," &c.

The plaintiff in error contends that inasmuch as the cross-complaint was demurred to, this charge is to be taken as admitted. It is a well-settled rule, however, that a demurrer admits only such facts as are well and sufficiently pleaded. It does not admit immaterial facts (Aurora City *vs.* West, 7 Wall., 82, 99), nor facts which are insufficiently stated (Ried *vs.* Field, 83 Va., 26, 31). This is exactly the case with this allegation in the cross-complaint, for aside from the looseness of the allegation, altogether made upon information and belief, and the failure to allege in what respect the decision complained of was erroneous, the facts set up are not such as a court of law will listen to in an action of ejectment based upon a patent issued by the United States Land Office. The cases of Smelting Co. *vs.* Kemp, 104 U. S., 636, and Steel *vs.* Smelting Co., 106 U. S., 447, both of which are supported by numerous other decisions of this court, are conclusive as to the untenability of such a defense. In the first of these cases it was held—I quote for conciseness from the head-note—that:

"A patent duly signed, countersigned, and sealed, which at the time it was issued, the Land Department had, under the statute, authority to convey *cannot be collaterally impeached in an action at law;* and the finding of the Department touching the existence of certain facts, or the performance of certain *antecedent* acts, upon which the lawful exercise of that authority may in a particular case depend, cannot in a *court of law* be questioned.

"If in the issuing of a patent the officers of that Department take mistaken views of the law, or draw erroneous conclusions from the evidence, *or act from either imperfect views of duty or* CORRUPT MOTIVES, the party aggrieved cannot set up such matters in a court of law to defeat the patent. He must resort to a court of equity."

So, in the subsequent case of Steel *vs.* Smelting Co., this court said:

"We have so often had occasion to speak of the Land Department, the object of its creation, and the powers it possesses in the alienation by patent of portions of the public

lands, that it creates an unpleasant surprise to find that counsel, in discussing the effect to be given to the action of that Department, overlook our decisions on the subject. That Department, as we have repeatedly said, was established to supervise the various proceedings whereby a conveyance of the title from the United States to portions of the public domain is obtained, and to see that the requirements of different acts of Congress are fully complied with. Necessarily, therefore, it must consider and pass upon the qualifications of the applicant, the acts he has performed to secure the title, the nature of the land, and whether it is of the class which is open to sale. Its judgment upon these matters is that of a special tribunal, and is unassailable, except by *direct proceedings* for its annulment or limitation. Such has been the uniform language of this court in repeated decisions."

See also Noble *v.* Union River R. R., 147 U. S., 165.

A cross-complaint very like the one at bar was considered in Grant *vs.* Oliver, 91 Cal., 158. That case was referred to by the court below in this case and largely quoted from. It is difficult to suppress the suspicion that the pleader at the time of drafting his cross-complaint in the present case had this overruled cross-complaint in Grant *vs.* Oliver before him, and availed himself of its frivolous suggestions in constructing his defense. Of these allegations, however, that court said:

"The allegations of the cross-complaint, with respect to the conduct of the officers of the Land Department, *are so absurd* that we do not deem it necessary to notice them. If they were true, and could be proved, the defendant would not be entitled to the relief he claims in *this* action."

So also with the allegations that the appeal of Rogers from the decision of the register and receiver was invalid, because, as it is alleged, it was taken after the time provided by the rules of the Department. But, besides being obnoxious to the rule against collateral attack, these are matters entirely within the control of the Department. Its rules are

directory only, and their enforcement is within the discretion of the Department (Smelting Co. *vs.* Kemp, *supra;* Gage *vs.* Gunther, 136 Cal., 338).

III.

The second exception is to the action of the court below in admitting in evidence the patent to Enos J. Rogers, deceased husband of one of the plaintiffs below and the father of the other. The exception was upon the ground that the patentee was dead at the time the patent was issued in his name (R., 18). The exception does not form any part of the assignments of error, and is not even alluded to in the argument presented by counsel for plaintiff in error in his brief, and we may well assume it to be abandoned in view of the provisions of section 2448, R. S. U. S., which provides that—

"Where patents for public lands have been or may be issued, in pursuance of any law of the United States, to a person who had died, or who hereafter dies, before the date of such patent, the title to the land designated therein *shall inure* to and become vested in the heirs, devisees, or assignees of such deceased patentee as if the patent had issued to the deceased during life."

IV.

NO FEDERAL QUESTION INVOLVED.

Having reviewed the whole record, it is respectfully submitted that the plaintiff in error has not brought to this court a question that it is authorized to review under section 709 of the Revised Statutes. The mere fact that the plaintiff in error *avers* that he has been deprived of some right, title, privilege, or immunity under the statutes of the United States does not create a Federal question.

Hamblin *vs.* Western Land Co., 147 U. S., 531.

State of Iowa v Rood S.C.U.S. Oct. Term 1904

The burden of the cross-complaint is that De Cambra was defrauded by certain alleged acts of Rogers in obtaining a patent for Government land which he, De Cambra, would have been entitled to receive had Rogers not tricked him. That was a matter of fact which was submitted to the Land Office, and that office decided against De Cambra. He alleges, however, that the Secretary of the Interior without reading the testimony or writing the opinion, though it is admitted he signed it, decided against him. In what matter of *law* the decision was erroneous is not stated. He afterwards, when sued in ejectment, sets up these matters as a defense in a cross-complaint. The court below in sustaining the demurrer decides that it cannot inquire into facts already adjudicated. That is not a decision upon a Federal question, but an application of a well-known principle of the common law to a bad pleading. What Federal question under the decisions of this court is involved in this case? Questions of *fact* do not involve questions of Federal *law* (Quimby *vs.* Boyd, 128 U. S., 488, 489); neither do questions of common law.

In Dower *vs.* Richards, 151 U. S., 658, 668, this court, speaking through Mr. Justice Gray, said:

"That this court, in an action at law, at least, has no jurisdiction to review the decision of the highest court of a State upon a pure question of fact, although a Federal question would or would not be presented according to the way in which the question of fact was decided, is clearly settled by a series of later decisions."

The learned justice then cites and quotes from a number of cases supporting this statement, which are hereinafter cited. If this judgment be reversed, it must necessarily be upon the ground that the lower court should have permitted De Cambra to prove (if he could) the allegations of fraud which he makes in his cross-complaint and which have been already passed upon by the Land Department. Can it be

said that the question whether or not this court should reverse a judgment at law for such a purpose involves the question whether the court below has decided against the *validity* of some right, title, privilege, or immunity claimed by the plaintiff in error under the Constitution and laws of the United States?

In Moreland *vs.* Page, 20 How., 522, 523, this court dismissed a writ of error to review the judgment of a State court, saying:

"It is a question of *fact*, depending on monuments to be found on the ground, documents in the land office, or the opinion of experts or surveyors appointed by the court or the parties. If the accident to the controversy that both parties *claim title under the United States* should be considered as sufficient to bring it within our jurisdiction, then every controversy involving the title to such lands, whether it involve the inheritance, partition, devise or sale of it, may with equal propriety, be subject to the examination of this court in all time to come."

In Carpenter *vs.* Williams, 9 Wall., 785, 786, Mr. Justice Miller, delivering the opinion of the court, said:

"It is a mistake to suppose that every suit for real estate, in which the parties claiming under the Federal Government are at issue as to which of them is entitled to the benefit of that title necessarily raises a question of Federal cognizance. If this were so, the title to all the vast domain, once vested in the United States, could be brought from the State courts to this tribunal."

In Crary *vs.* Devlin, 23 Lawyers' Reports, 510, 511, in an action to recover the price of alcohol sold, the defendant contended that the sale was unlawful because of a violation of the internal-revenue laws of the United States. The court of appeals of New York gave judgment for the plaintiff, because no violation was proved. This court dismissed the writ of error, Chief Justice Waite saying:

"The judgment did not deny the validity of the statute, but the existence of the facts necessary to bring the case within its operation."

In California Powder Works Co. *vs.* Davis, 151 U. S., 389, 393, Chief Justice Fuller, delivering the judgment of the court, said:

"It is equally well settled that where our jurisdiction depends upon the denial by a State court of a title, right, privilege, or immunity claimed under the Constitution, or any treaty or statute of the United States, it must appear on the record that such title, right, privilege, or immunity was specially set up or claimed at the *proper* time and in the *proper* way, and that the decision was against the right so set up or claimed."

It is, I respectfully submit, too plain for argument that plaintiff in error has not "at the proper time and in the proper way" set up any such title, right, privilege, or immunity.

For the foregoing reasons it is submitted that the judgment of the court below should be affirmed.

FRANKLIN H. MACKEY,
For Defendants in Error.

Supreme Court of the United States.

No. 170.—October Term, 1902.

Manuel S. De Cambra, Plaintiff in Error, vs. Hannah Rogers and Frank J. Rogers. } In error to the Supreme Court of the State of California.

[March 16, 1903.]

On April 28, 1897, Hannah Rogers and Frank J. Rogers, holders of the legal title to a tract of land in Alameda County, commenced in the Superior Court of that county an action in ejectment against Manuel S. De Cambra and others. The defendants answered with a general denial, and, as authorized by the practice in California, De Cambra filed a cross complaint in equity, alleging that the plaintiffs had obtained the legal title wrongfully and held it in trust for him, and prayed a decree quieting his title to the land. A demurrer to this cross complaint was sustained, and upon a trial of the action a judgment was rendered in favor of the plaintiffs, which judgment was affirmed by the Supreme Court of California, (132 Cal. 502,) and thereupon this writ of error was sued out.

Mr. Justice Brewer delivered the opinion of the Court.

The only question presented arises on the demurrer to the cross complaint. That cross complaint averred that in 1867 De Cambra purchased from one Hewett Steele the premises in controversy, with other adjoining lands, all of which were enclosed with fences and well-known exterior boundaries; that he entered into actual possession thereof, and has ever since continuously resided thereon; that in 1871 he sold an undivided half interest in the tract to Enos J. Rogers, the husband of Hannah and the father of Frank J. Rogers; that at that time the land was supposed to be a portion of a Mexican grant, and was within its exterior boundaries; that on August 10, 1878, the final official survey disclosed that there were more than three leagues of land within the exterior boundaries of said grant, and thereupon a part thereof, including the land in controversy, was restored by the United States to the public domain; that De Cambra and Rogers, who were brothers-in-law, agreed upon a division of the land excluded from the grant and restored to the public domain, De Cambra to take one portion, and that the tract in controversy, and Rogers the other; that thereupon they went to the local land office to

file their applications for entry; that De Cambra, being unable to read or write, and understanding the English language very imperfectly, trusted to Rogers to prepare the pre-emption papers; that Rogers knowingly and fraudulently prepared the papers so as to make De Cambra an applicant for land upon which there was no dwelling house or other improvement, and only a small part of which was in his possession and three-fourths of which was thoroughly worthless, Rogers himself filing a pre-emption claim for the land which it had been agreed should be entered by De Cambra, the land which was his homestead and upon which his improvements had been made; that De Cambra did not discover this until December 29, 1883; that thereupon he made the proper application at the land office for this land; that a contest ensued, which was finally decided by the Secretary of the Interior in favor of Rogers, and the land patented to the plaintiffs, his widow and son. The cross complaint further averred that although the decision apparently rendered by the Secretary of the Interior was signed by him, yet in fact for want of time and opportunity the Secretary had not read or heard read the evidence in the contested case, and simply signed his name to a report prepared by one of the clerks in the department.

This cross complaint states no question of law decided in these contest proceedings in the Land Department adversely to De Cambra. Indeed, the grounds of the decision are not disclosed. There is no copy of the testimony given on the contest. It appears that De Cambra offered testimony showing his qualifications, settlement, occupation, &c., and it is stated that some evidence was given in support of the Rogers application. It is alleged that the land officers came to their conclusion "by the misconstruction of the evidence submitted to them and the misapplication of the law to the evidence, and in violation of the just and equitable rights and claims of Manuel S. De Cambra." For all that appears, the officers may have found the facts to be just the contrary to the averments in the cross complaint; and if they misapplied any rule of law to the testimony we are not advised of the rule they misapplied or how they misapplied it. As it appears affirmatively that, before the contest, De Cambra was informed of the nature of the wrongs he alleges were perpetrated upon him by Rogers, it may be presumed that evidence was offered by both parties upon that question, and that it was decided adversely to his contention. Under those circumstances nothing is shown except an ordinary contest between two applicants for pre-emption, in which the land officers upon the testimony decided in favor of one and against the other. But it is well settled that the decision of the Land Department upon questions of fact is conclusive in the courts. (*Burfenning* v. *Chicago &c. Railway*, 163 U. S. 321, 323, and cases cited; *Johnson* v. *Drew*, 171 U. S. 93, 99; *Gardner* v. *Bonestell*, 180 U. S. 362.)

It is hardly necessary to say that when a decision has been made by the Secretary of the Interior, courts will not entertain an inquiry as to the extent of his investigation and knowledge of the points decided, or as to the methods by which he reached his determination.

These are the only Federal questions presented, and their decision was unquestionably correct.

The judgment of the Supreme Court of California is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.